BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2002-66-C – ORDER ON. 2002-450

JUNE 12, 2002

IN RE:	Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South Inc.	**ORDER ON ARBITRATION**

I. PROCEDURAL BACKGROUND

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Arbitration ("Petition") filed by HTC Communications, Inc. ("HTC") for arbitration of certain issues pertaining to the terms and conditions of a new interconnection agreement between HTC and Verizon South, Inc., f/k/a GTE South Incorporated ("Verizon").[1] Pursuant to Section 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"),[2] Verizon received HTC's request to negotiate a new interconnection agreement on September 22, 2001. HTC filed its Petition (Petition), pursuant to the provisions of Section 252 of the Act, on March 1, 2002. HTC's Petition set forth with particularity thirty-seven (37) unresolved issues between the Parties. Verizon filed a response ("Response") on March 26, 2002, responding to the same thirty-seven (37) issues raised in the Petition. Both Parties submitted pre-hearing briefs.

A hearing on this Arbitration was held on May 6, 2002, with the Honorable William

1 HTC and Verizon are sometimes individually referred to herein as a "Party," or collectively as "Parties."
2 47 U.S.C. §§ 252(b)(1) and (2).

Saunders, Chairman, presiding. At the hearing, HTC was represented by M. John Bowen, Jr., Esquire, Margaret M. Fox, Esquire, and Stephen G. Kraskin, Esquire. HTC presented the Direct Testimony of Larry Spainhour and Steven Watkins, as well as the Rebuttal Testimony of Larry Spainhour, Steven Watkins, and Brent Groome.

Verizon was represented at the hearing by Steven W. Hamm, Esquire, Kimberly A. Newman, Esquire, and Thomas C. Singher, Esquire. Verizon presented the Direct Testimony of Rosemarie Clayton and Richard Rousey (jointly filed), Kim Wiklund, and Peter J. D'Amico, as well as the Surrebuttal Testimony of Rosemarie Clayton/Richard Rousey/Randall Sims/Vicky Nash Shaw (jointly filed), Kim Wiklund, and Peter J. D'Amico.

In their pleadings, the Parties identified thirty-seven (37) unresolved issues that required the Commission's attention. Negotiations between HTC and Verizon continued after the filing of the Petition. At the outset of the hearing, the Parties informed the Commission that two of the issues; those numbered 16 and 22 in HTC's Petition and in Verizon's Response, had been resolved by the Parties. Subsequent to the hearing, the Parties resolved Issue No. 15 regarding subscriber listings. In addition, the Parties informed the Commission that they would not be addressing certain issues during the hearing, but had agreed to rely on the pleadings (i.e., the Petition, the Response, the Pre-hearing Briefs of the Parties, Testimony of the Parties, and any post-hearing briefs or proposed orders that would be submitted) with respect to those issues. The Commission agreed to proceed in that manner with respect to Issue Nos. 2, 3, 4, 5, 6, 7, 12, 13, 21, 27, 28, 29, and 30.

The respective Parties' prefiled testimony and exhibits were entered into the record. Counsel for HTC objected to the surrebuttal testimony of Mr. Sims and Ms. Shaw and moved to strike certain portions of the testimony. TR. at 165. The objection was based on the grounds that, by the express terms of the testimony, it was responsive to HTC's direct testimony rather than HTC's rebuttal testimony. TR. at 166-68. HTC's counsel argued that this was beyond the scope of what should properly be included in surrebuttal testimony. TR. at 166. In addition, HTC's counsel argued that Ms. Clayton and Mr. Rousey's direct testimony already responded to HTC's direct testimony on Issue 11, but that the "surrebuttal" testimony inappropriately contained additional arguments. TR. at 171. The Commission ruled that it would admit the surrebuttal testimony and would rule on the motion to strike in the final order. TR. at 174. HTC's objection was noted on the record as a continuing objection. TR. at 289.

HTC also moved to strike page 6, line 6 through page 8, line 19 of the "surrebuttal" testimony of Clayton, Rousey, Sims, and Shaw. Counsel for HTC argued that Sims and Shaw were not present at the meeting which they discuss on pages 6 through 8; therefore the testimony should be struck. TR. at 337-339.

We deny both Motions to Strike. This is an arbitration proceeding and the Commission may entertain evidence that is normally not admissible in other proceedings regularly held before this Commission. We will admit the testimony and give whatever weight we deem appropriate to the testimony.

II. LEGAL STANDARDS AND PROCESSES FOR ARBITRATION

The Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith. 47 U.S.C. § 251(c)(1). After negotiations have continued for a specified period, the Act allows either party to petition a state commission for arbitration of unresolved issues. 47 U.S.C. § 252(b)(1). The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved, and must include all relevant documentation, including the position of each of the parties with respect to the unresolved issues. 47 U.S.C. § 252(b)(2)(A). A non-petitioning party to a negotiation under this section may respond to the other party's petition and may provide such additional information as it wishes within twenty-five (25) days after the state commission receives the petition. 47 U.S.C. § 252(b)(3). The Act limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and the response. 47 U.S.C. § 252(b)(4).

Through the arbitration process, the Commission must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the Act are met. Once the Commission provides guidance on the unresolved issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to the Commission for its final approval. 47 U.S.C. § 252(e).

The purpose of this arbitration proceeding is the resolution by the Commission of the remaining disputed issues set forth in the Petition and Response. 47 U.S.C. § 252(b)(4)(c). Under the Act, the Commission shall ensure that its arbitration decision meets the requirements of Section 251 and any valid Federal Communications Commission ("FCC") regulations pursuant to Section 252; shall establish rates according to the provisions of Section 252(d) for interconnection, services, and network elements; and shall provide a schedule for implementation of the terms and conditions by the parties to the Agreement. 47 U.S.C. § 252(c).

III. DISCUSSION OF ISSUES

As noted above, HTC's Petition sets forth thirty-seven (37) areas of disagreement, identified as Issues 1 through 37 in the Petition. Prior to the hearing, HTC and Verizon resolved two (2) of the issues (those numbered 16 and 22). Subsequent to the hearing, the Parties resolved Issue No. 15 regarding subscriber listings. Therefore, thirty-four (34) issues remain for the Commission to resolve.

In this section, we will address and resolve the open issues that have not been settled by negotiation and, therefore, must be resolved by the Commission pursuant to Section 252(b)(4) of the Act. The issues which the Commission must resolve are set forth in this section, along with a discussion of each issue that sets forth the Commission's findings and conclusions.

ISSUE 1: OUTSIDE DOCUMENTS. What should be the proper relationship of "Outside Documents" to the actual agreement between the Parties?

HTC's Position:

HTC asserts that Verizon's proposed agreement contains numerous references to outside documents which, according to Verizon, may control and prevail over the negotiated terms and conditions of the agreement. HTC Pre-Hearing Brief at 13. These outside documents may include such things as Verizon's internal policy statements, manuals, and websites, many of which are unilaterally adopted by Verizon and are subject to change. Id. While HTC is amenable to including limited and specific references to tariffs, HTC believes the terms of the agreement should not be subject to change as a result of unilaterally-developed outside documents. Petition at 11.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions §§ 1.1 and 1.3, without the modifications suggested by HTC. Verizon's language in Section 1.1, which incorporates tariffs and outside documents as part of this Agreement, implements two fundamental principles critical to a successful interconnection relationship.

First, it ensures that the new interconnection agreement will evolve at the same pace as the rapidly developing telecommunications industry. Even if it were possible to incorporate all of the documents, regulations, and guidelines applicable to the Parties' relationship into a single document, which it is not, that document would be outdated almost immediately upon execution. Rather than committing to an immediately outdated agreement, Verizon's template Section 1.1 ensures that the Parties will continue to conduct their relationship according to the most current tariffs, guidelines and industry procedures.

Verizon's website, moreover, provides a further guarantee for HTC in this regard. Responding to HTC's criticisms about the website, Verizon's witness Kim Wiklund provided an overview that will allow the Commission to conclude that HTC has failed to substantiate its position:

> Mr. Spainhour's criticisms of Verizon's website and ordering process are unfounded. Verizon's website is an invaluable tool for all CLECs doing business with Verizon. It is appropriately an ever-changing source of information and documentation on ordering, provisioning, repair, and billing processes and procedures. In his testimony, Mr. Spainhour suggests that reliance on a website rather than the interconnection agreement itself somehow places HTC at a disadvantage. He is mistaken. The Verizon website instructs and imparts information to CLECs in a central, up-to-date, convenient location. There are no CLEC-specific business rules, edits or order processes that would merit a separate "instruction manual." Instead, the ordering, repair and billing functions contained on the website are uniformly applied to all telecommunications carriers in the state.
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> The website is continually updated to assist all CLECs, including HTC, run their businesses more efficiently. Verizon maintains unrestricted electronic access to all information necessary to support day-to-day transactions. Any CLEC with access to the Internet may access the Verizon website and obtain computer-based training; production and proposed ordering and business rules; electronic pre-order, order, billing and repair transaction standards; and other useful information.
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> Finally, neither GTE nor Verizon has ever attempted to document every form, field, business rule, edit or transaction in an interconnection agreement. This is an impossible expectation. Today, the Verizon website is estimated to contain more than 11,500 pages of information to assist the CLEC community in all aspects of local service provisions. When changes are necessary in this "documentation," the members of the CLEC community that have requested it receive an e-mail notification. Changes that affect systems are noted in monthly system development schedules and communicated in advance to all CLECs at designated notice intervals. The CLEC can inquire via support desks, account management, or the change management forum on any issue requiring additional clarification. Including this same information *within the new interconnection agreement* and keeping it updated would be impossible and unnecessary. Wiklund Testimony at 8-10.

When asked about Mr. Spainhour's complaint that Verizon changes its pre-ordering, ordering, repair and billing processes unilaterally, Ms. Wiklund likewise noted, "It's not true. The change management process available on the website was developed in conjunction with CLECs as part of the Bell Atlantic/GTE merger conditions." Id. at 10. Mr. Spainhour's criticisms have no factual or legal basis and should not be incorporated by the Commission in the final interconnection agreement.

Second, Verizon's Section 1.1 implements the Act's non-discrimination requirements.

Verizon is not required nor is it appropriate to create a customized relationship for every interconnecting carrier. Common business rules, methodologies and procedures promote efficiency and non-discriminatory treatment. Verizon's systems and procedures are designed to reflect these basic business and technical realities. By incorporating Verizon's tariffs and other external documents, Section 1.1 ensures that every carrier will be on equal competitive footing. Reviewing this very issue, the New York Public Service Commission recently found:

> We find that the tariff approach is entirely suitable for implementing many of the interconnection and access requirements Verizon should bear under the Act . . . we are persuaded on the record presented that as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship. Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc., Order Resolving Arbitration Issues, Case 01-C-0095, 4 (N.Y. PSC July 30, 2001) ("N.Y. AT&T Arbitration Order") at Tab 16.
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> The Commission finds it is better to allow the new agreement between AT&T and Verizon to absorb tariff amendments and changes that are intended to implement substantial telecommunications policy initiatives than to freeze it at its inception. Id. at 5.

Furthermore, the FCC has endorsed Verizon's approach on the issue of outside documents and has even required it in some instances. Verizon cannot, for example, negotiate special intervals applicable to network change notices. FCC Rule 51.325 requires Verizon to provide public notice of such changes and until public notice has been provided, Verizon "may not disclose to separate affiliates, separated affiliates, or unaffiliated entities (including actual or potential competing service providers or competitors), information about planned network changes."47 C.F.R. Section 51.325(C) at Tab 4.

HTC's concerns regarding Verizon's supposed right to unilaterally alter the Parties' interconnection agreement likewise are unfounded. Section 1.2 of the new interconnection agreement, which is not in dispute, clearly states that where provisions in the Agreement and another document conflict, the terms in the new interconnection agreement shall control. Industry guidelines and Verizon's tariffs, moreover, are usually the result of collaborative proceedings in which any interested party may participate. Tariffs require FCC or Commission approval granted in accordance with the applicable public interest standards. Thus, Verizon's template language adequately addresses HTC's concerns.

Finally, HTC's edits to Section 1.3 appears to be an attempt to interfere with the Commission's tariffing process, as it would prohibit Verizon from adding, modifying, or withdrawing any tariff in the absence of 60 days' notice to HTC. The proposed language would alter the Commission's processes, as well as Verizon's relationships with other customers, and is not in the public interest and should be denied. The Commission should reject HTC's edits and adopt Verizon's template language in its entirety.

Discussion:

We adopt Verizon's proposed General Terms and Conditions Sections 1.1 and 1.3, without modifications suggested by HTC. We agree with Verizon that its wording in Section 1.1 ensures that the new interconnection agreement will evolve at the same pace as the rapidly developing telecommunications industry. Further, Verizon's language ensures that the Parties will continue to conduct their relationship according to the most current tariffs, guidelines and industry procedures. Moreover, Verizon's website is an invaluable tool for all CLECs doing business with Verizon, as Verizon's website is continually updated to assist all CLECs, including HTC, run their businesses more efficiently. We also agree that incorporating Verizon's tariffs and other external documents insures that every carrier will be on equal competitive footing. Moreover, regarding HTC's concern that Verizon can unilaterally alter the interconnection agreement, HTC can participate in the change management process where industry guidelines and Verizon's tariffs are addressed. See Appendix A to the Post-Hearing Brief of Verizon South, Inc. at 4,5, and 6. Finally, pursuant to Section 58-9-576(B)(5), Verizon's rates are subject to a complaint process for abuse of market position in accordance with the Commission's guidelines.

ISSUE 2. CHANGES IN LAW. How should material changes in law or regulation affect the provisions of the agreement?

HTC's Position:

The Parties appear to agree on the concept that the law and regulations are subject to change, and that the Parties should have an opportunity to revise the agreement in the event there is a material change in the law. See, e.g., HTC Pre-Hearing Brief at 16. However, HTC believes this concept can be included in the agreement in a single section, rather than the four (4) sections proposed by Verizon. According to HTC, Verizon's proposed language is redundant, confusing, and potentially conflicting. Petition at 12. HTC proposes the following language in place of Verizon's proposed Sections 4.6, 4.7, 50.1 and 50.2:

> 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law (collectively "Change in Law"),

materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. Notwithstanding anything in this Agreement to the contrary, if, as a result of any Change in Law, Verizon is not required by Applicable Law to provide to HTC a Service, UNE, Combination, payment, or benefit otherwise required to be provided to HTC hereunder, then Verizon may discontinue the provision of any such Service, payment or benefit, provided that if Verizon intends to terminate its provision of any Service under this Agreement, Verizon will provide sixty (60) days' prior written notice to HTC of any such discontinuance of a Service unless termination of the Service at issue will require HTC to terminate or reconfigure a service to any existing HTC Customers in which case Verizon will provide prior written notice of at least one hundred and twenty (120) days, or unless a different notice period or different conditions are specified in this Agreement (including but not limited to, in an applicable Tariff) or are required by Applicable Law for termination of such Service, in which event such specified period and/or conditions shall apply. Any such termination shall be implemented on a non-discriminatory basis in accordance with Applicable Law. Changes in Law will not affect retroactively any payments previously made between the Parties pursuant to this Agreement unless the Change in Law explicitly requires retroactive adjustment.

Similarly, HTC asserts that Section 1.4 of the Network Elements Attachment (regarding new UNEs or Combinations that may be required of Verizon during the effectiveness of the Agreement) should be modified consistent with the language above. The changed language should be as follows:

1.4 Notwithstanding any other provision of this Agreement:

1.4.1 To the extent Verizon is required by a change in Applicable Law to provide to HTC a UNE or Combination that is not offered under this Agreement to HTC as of the Effective Date, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law (including, but not limited to, the terms and conditions defining the UNE or Combination and stating when and where the UNE or Combination will be available and how it will be used, and terms, conditions and prices for the provision of the UNE or Combination). The terms and conditions for the provision of the UNE or Combination shall be consistent with the requirements of the change in Applicable Law.

1.4.2 To the extent allowed by Applicable Law, Verizon shall not be obligated to provide to HTC, and HTC shall not request from Verizon, access to a proprietary advanced intelligent network service.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions §§ 4.6, 4.7, 50.1, and 50.2, as well as Network Elements Attachment § 1.4.1, without the modifications suggested by HTC.

HTC asserts that sections 4.6, 4.7 and 50.1 should be combined in order to avoid alleged "redundant and potentially confusing and/or conflicting" language. HTC fails to recognize that Sections 4.6 and 4.7 have different purposes. Section 4.6 addresses a "change in law" that affects a material term of the existing agreement and which may thus require the parties to "amend" the agreement to comply with the change. Section 4.7 speaks more specifically, not to an amendment, but rather implementation of a change in law that removes an obligation on Verizon to provide a benefit or service which was previously being provided pursuant to the agreement. As such, Section 4.7 prescribes the notice required to HTC upon Verizon's discontinuation of a service.

In addition to its proposal to combine provisions, HTC seeks to add language requiring a 60-day notice of service discontinuation and a 120-day notice of service reconfiguration when the law no longer requires Verizon to provide a particular service. HTC's position is unreasonable because it seeks to (1) extend the application of superseded law; and (2) secure preferential treatment by requiring Verizon to continue to provide to HTC, during the extended notice period, a service that Verizon is not obligated to provide to other CLECs. The Commission should note that HTC's proposal deprives Verizon of its right to the full benefits of any change in law and compels Verizon to discriminate among CLECs.

Section 50.1 addresses broader circumstances than sections 4.6 and 4.7; that is, Verizon's ability to discontinue any service not required by law, regardless of whether a particular law has changed. Verizon needs the flexibility to change and update its products. For example, HTC may resell a retail product Verizon provides to its end users. Verizon must be able to maintain the ability to discontinue that product to its own customers and replace it with another, as long as there are no legal prohibitions on doing so. Section 50.1 assures that Verizon retains the ability to run its own business. HTC has no legitimate basis for objecting to this provision, and the Commission should adopt Verizon's language to ensure that Verizon can continue to address changing market conditions.

Discussion:

HTC's proposed language appears to address the concerns of Verizon. It provides that the Parties will negotiate in good faith to amend the agreement to the extent necessary to comply with changes in applicable law. It also provides that Verizon may discontinue a service, UNE, combination, payment or benefit if there is a change in applicable law that removes Verizon's obligation to provide such service, UNE, combination, payment or benefit.

The Parties differ with respect to what would be the appropriate notice in the event Verizon discontinues a service as a result of a change in law. Verizon believes thirty (30) days is adequate. Response at 6. HTC believes that sixty (60) days is appropriate, and that Verizon should be required to give one hundred twenty (120) days notice if termination of the service at issue will require HTC to terminate or reconfigure a service to any existing HTC customers. Petition at 12-13. We agree that HTC's proposed time frames for notice are reasonable and will result in less disruption to the public as a result of discontinued services. We find Verizon's argument that this will extend the application of superseded law to be without merit. See Verizon Pre-Hearing Brief at 7. The language proposed by HTC clearly states that these notice provisions will apply "unless a different notice period or different conditions are specified in this Agreement . . . or are required by applicable law for termination of such service, in which event such specified period and/or conditions shall apply."

ISSUE 3. SALE OF EXCHANGES. How should the sale by Verizon of any operating exchanges affect the interconnection services available to HTC?

HTC's Position:

HTC's position is that the sale of any Verizon operating area to a third party should not result in the disruption of HTC's interconnection rights and the existing arrangements. Petition at 14. HTC asserts that its sole concern with respect to Verizon's sale of its operating exchanges, or any other potential assignment, is in avoiding disruption or degradation of service to HTC's customers. HTC Pre-Hearing Brief at 18.

To address these concerns, HTC proposes that Section 5.0 include a provision that states that "120-days written notice is required prior to any assignment, and notice should contain reasonable evidence of the assignee's resources, ability and authority to provide satisfactory performance under the Agreement." The provisions of Section 43.2 of the General Terms should reflect the same conditions; i.e., one hundred twenty (120) days notice and evidence that the party to which the property will be sold is prepared to perform in accordance with the agreement. Petition at 14.

In addition, HTC believes the last sentence of Section 43.2 should be modified to read: "Notwithstanding the application of the terms of the Agreement with respect to the specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas." Id.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions §§ 5 and 43.2, without the modifications drafted by HTC. HTC seeks to impose, in the guise of notice requirements, conditions in the interconnection agreement that would effectively allow HTC to block transfer of any or all of Verizon's operations in South Carolina. HTC's proposal is outside the scope of this arbitration proceeding under the Act. The assignment and transfer of assets is not an issue subject to negotiation and arbitration, pursuant to 47 U.S.C. § 251, et seq. because it has nothing to do with interconnection. Accordingly, this Commission does not have jurisdiction, pursuant to 47 U.S.C. § 252, to impose in an interconnection agreement any condition on Verizon's ability to assign or transfer its assets.

HTC seeks to confuse the Commission's jurisdiction to arbitrate an interconnection agreement under the Act with its authority to review and approve transfers under state law. If Verizon proposed to sell its South Carolina assets, it would be required to seek this Commission's approval of that transaction under South Carolina Code § 58-9-310. If HTC or any other carrier believed the transfer raised a legitimate issue with regard to their rights to continue to receive wholesale services, it could raise its concerns in the transfer proceeding. In that manner, HTC would have the same rights as all Verizon customers, including other CLECs interconnecting with Verizon. HTC is not entitled in this interconnection arbitration to gain special, non-interconnection-related protections unavailable to other carriers.

With regard to exactly this issue, the New York Public Service Commission concluded, in a Section 252 arbitration between Verizon New York Inc. and AT&T, that issues regarding the sale or transfer of assets are not properly addressed in an interconnection agreement:

> [CLECs'] interests are best addressed in the context of the Commission review of any proposed transfer of Verizon's assets that would occur pursuant to [New York statute] . . . . The actions available to the Commission pursuant to [New York law] provide an adequate forum for the presentation and consideration of any such matters by the affected parties. In re: Joint Petition of AT&T Communications of New York, et al. For Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc., Order Resolving Arbitration Issues, Case 01-C-0095, Tab 16 at 25 (N.Y. PSC July 30, 2001).

Contrary to HTC's assertions, no rule of law permits, much less compels, Verizon to continue its obligations under an interconnection agreement after the relevant assets have been sold. The rights and obligations of an ILEC under state and federal law would no longer reside with Verizon, but with the transferee company, once those assets were in the possession of that company. As a result, it would be impossible for Verizon to satisfy obligations under an interconnection agreement when it no longer possessed the assets to do so.

Finally, the specific contract language edits HTC proposes are unnecessary and confusing. Section 43.2 of the General Terms and Conditions details Verizon's right to terminate the new interconnection agreement "as to any specific operating territory or portion thereof if Verizon sells or otherwise transfers its operations in such territory or portion thereof to a third-person." HTC proposes additional language to the effect that the new interconnection agreement shall remain in full force and effect in Verizon's remaining operating areas. Section

43.2 as originally stated, however, only permits Verizon to terminate the agreement as it would apply to the specific operations Verizon transfers. Thus, HTC's addition is confusing and redundant and should be rejected by the Commission.

In addition, HTC would also require 120, rather than 90 days' notice of sale of Verizon's property. HTC offers no basis to justify this unnecessarily long notice period. All of Verizon's other contracts with South Carolina CLECs require 90 days, as Verizon has proposed here, and HTC should receive no special treatment in this regard – especially in light of the fact that Verizon will need Commission approval before it transfers any of its operation.

Finally, HTC's edits to Section 5 make no sense in terms of contract law. HTC's language speaks to assignment, but the only way for HTC's exact rights and obligations under the Verizon-HTC contract to survive a transfer of Verizon's South Carolina's asset, would be through a novation. That process would involve replacing Verizon with a new party. The assignments provision, in contrast, addresses the situation where either party assigns certain of it rights, obligations, or duties to a third party with the second party's written consent. Contract language addressing termination upon sale should be confined to Section 43.2.

For all of the above reasons, the Commission should deny HTC's proposed language with regard to this issue.

Discussion:

We adopt Verizon's proposed General Terms and Conditions Sections 5 and 43.2, without the modifications drafted by HTC. First, we agree with Verizon that HTC's proposal is outside the scope of the arbitration proceeding under the Act. See Appendix A to Post Hearing Brief of Verizon South, Inc. at 10. We also concur with Verizon that the assignment and transfer of assets is not an issue subject to negotiation and arbitration, pursuant to 47 U.S.C. Section 251, *et. seq.* Id. Further, we find and conclude that the described transfer of assets would require a proceeding before this Commission, pursuant to S.C. Code Ann. Section 58-9-310 (Supp. 2001) wherein an interested party, such as HTC, could raise its concerns regarding the transfer of assets during such proceeding.

ISSUE 4. AUDITS. What conditions should apply with respect to audits between the parties?

HTC's Position:

HTC's position is that the provisions proposed by Verizon -- which would require a party conducting an audit to employ a Certified Public Accountant (CPA) approved by the other party and to provide at least sixty (60) days prior notice of an intent to audit – would subject HTC to greater audit costs and burdens than are reasonably necessary. Petition at 14.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions § 7.2, without the modifications suggested by HTC.

This issue has been partially resolved as the Parties recently agreed to a $100,000 threshold. HTC has not, however, agreed to Verizon's proposal to use independent certified public accountants reasonably acceptable to the Audited Party. Verizon's language is inherently reasonable and appropriate. Audits are likely to involve sensitive proprietary data that must be protected. Requiring independent certified auditors will also ensure that neither party may use the audit process as a fishing expedition into the other's business practices and procedures.

HTC alleges that Verizon's language is intended to cause unnecessary delay or "subject HTC to greater audit costs and burdens than are reasonably necessary." Petition at 14. Utilizing an independent auditor that is "reasonably acceptable" to the audited party provides the highest level of business protection and timeliness to both Parties under the new interconnection agreement. It is commercially unreasonable for HTC to insist that its own employees have access to Verizon's confidential information.

Verizon also proposes that the Auditing Party require the audit to commence no later than 60 days after the Auditing Party has given notice of the audit to the Audited Party. HTC proposes 30 days.

It is in both Parties' best interest to allow sufficient time to agree on an auditor and to prepare for the audit. Verizon's 60-day period better reflects the time necessary to complete these important tasks and is, in any event, intended only to set a reasonable outside limit; the actual time may be shorter. The Commission should adopt Verizon's language as the more reasonable and appropriate proposal.

Discussion:

HTC and many other smaller CLECs and incumbent LECs utilize several major consulting firms as experts in the areas of service provision, billing, and other matters that would be associated with anticipated audits. Petition at 14. These consultants do not typically employ CPAs because this qualification is not necessary for the specific telecommunications industry expertise associated with these activities. Id. HTC has also stated that, if it needed to conduct an audit of Verizon, HTC may wish to utilize its own staff experts to conduct the audit. Id.

While the use of CPAs to conduct audits may be widespread among RBOCs like Verizon, we must recognize that smaller companies attempting to compete with Verizon may not have the same resources. We must allow small CLECs like HTC to employ their own experts in the telecommunications field and to use their own staff experts to conduct audits. Employing CPAs is not necessary in most cases and would add additional expense to the audit process. See Petition at 14; HTC Pre-Hearing Brief at 20. Furthermore, the process of selecting and having the other party approve a CPA would unnecessarily delay the commencement of audits. We conclude that HTC's position with respect to who may conduct an audit is reasonable. Having decided this, we also conclude that the parties should be able to begin audits on thirty (30) days notice.

ISSUE 5. PAYMENT, CREDITS, DISPUTED BILLS. What are the proper terms for payment, credits, interest, and the interim resolution of disputed bills?

HTC's Position:

HTC's position is that disputed payments should be treated the same, regardless of whether payment is initially made or withheld. Petition at 15. In other words, if a party makes a payment and later disputes the amount, HTC believes that a credit should be issued for the disputed amount. To do otherwise, according to HTC, would provide an incentive for parties to withhold payment whenever there is the remotest possibility of a dispute. Id.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions § 9.3, without the modifications suggested by HTC. Verizon cannot agree to HTC's proposed language in § 9.3 of the General Terms and Conditions requiring "the billing Party [to] return or credit the billed Party for the disputed amount" if a dispute arises after the bill is paid. It is unreasonable for the Commission to require Verizon to return any payments until a billing dispute is fully resolved.

It is important for the Commission to recognize the distinction between payments that are disputed and those that are made in error by HTC. For instance, if HTC mistakenly double pays a bill, Verizon certainly would credit or refund the overpayment. It is commercially unreasonable, however, for HTC to expect Verizon to refund or credit a *disputed* payment, that HTC already made voluntarily, pending the resolution of any dispute.

HTC's proposed language suggests that it does not want to assume responsibility for reviewing its bills prior to remitting payment. It would be unreasonable for the Commission to absolve HTC of this responsibility, which applies to all Verizon's customers. It is also unreasonable to allow HTC complete latitude to "discover" that certain payments should have been disputed after they have been voluntarily made, and then require Verizon to immediately return such payments prior to settling the dispute. The more reasonable course, in keeping with accepted commercial practices, is to require HTC to carefully review its bills and raise disputes before payment. In instances where HTC makes payment and then raises a dispute, it is reasonable and practical for Verizon to retain the payment until the dispute is settled and/or resolved pursuant to the contract's dispute resolution provisions.

Discussion:

We adopt Verizon's proposed General Terms and Conditions Section 9.3, without the modifications suggested by HTC. There is a distinction between payments that are disputed and those that are made in error. For instance, if a CLEC mistakenly double pays a bill, Verizon should credit or refund the overpayment. It is commercially unreasonable, however, for HTC to expect Verizon to refund or credit a disputed payment, that a CLEC made voluntarily, pending the resolution of any dispute. We agree with Verizon that in instances where a CLEC makes payment, and then raises a dispute, it is reasonable and practical for Verizon to retain the payment until the payment is settled and/or resolved pursuant to the contract's dispute resolution provisions.

ISSUE 6. DEFAULT. What are the proper terms for remedy of default conditions; what actions should be allowed as a result of default; and what should the responsibilities be for a Party that elects to terminate a provision of the agreement as a result of an alleged default?

HTC's Position:

HTC seeks to ensure that Verizon cannot use the default provisions of the Agreement to impede HTC's efforts. Petition at 16. Accordingly, HTC has proposed two changes to Section 12 of the General Terms regarding default.

First, HTC proposed that the agreement allow sixty (60) days for cure of an apparent default prior to more drastic action. According to HTC, this will allow sufficient time to effect a cure or resolve differences between the Parties with respect to an alleged default, so that end user customers will not be adversely impacted. Id. In addition, HTC believes it is reasonable and necessary, particularly in light of its past experience with Verizon, to hold a Party accountable for wrongfully pursuing actions for default against the other Party. Id.

Accordingly, HTC has proposed the addition of the following two (2) sentences to Section 12.0:

In the event of a default, the Parties will utilize reasonable cooperative efforts to act to

> prevent disruption of telecommunications service to HTC's customers. In the event that a Party elects to exercise rights in accordance with this provision, the electing Party assumes all related risks, responsibilities, and liability associated with its action in the event that it is subsequently determined that the other Party was not in default of this Agreement.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions § 12. HTC proposes two unreasonable changes to Verizon's proposed language.

First, HTC wants to double the time that a breach of the new interconnection agreement can continue, from thirty to sixty days, before the other party may take appropriate action to protect itself. HTC has not offered any rationale as to why a sixty-day period is needed, when a thirty-day period – the typical length of a carrier's billing cycle – is standard in the industry. It is unreasonable for the Commission to allow a CLEC "to continue to breach" for longer than thirty days after receipt of notice. As Verizon made clear to HTC during negotiations, the thirty-day cure period proposed by Verizon starts from the receipt of notice, *not* from the date of breach. Thus, HTC could potentially be in breach for much longer than thirty days before any relief could be sought under § 12.

For example, in the specific context of defaulting on payment of a bill (the most usual default), Verizon should not be required to wait for longer than one additional billing cycle before HTC cures. Under HTC's language, Verizon would have to continue to provision services (continuing and new) under the new interconnection agreement, even though HTC had demonstrated an inability or unwillingness to pay for services previously provided. This proposal is patently unreasonable and unfair to Verizon's other customers, who must ultimately bear the expense of bad debt.

Second, HTC seeks to add two sentences to § 12 that are ostensibly designed to avoid service disruptions occasioned by one party's default. With some modification, Verizon can agree in principle to most of the first sentence of HTC's second set of changes, which asks the Parties to "utilize reasonable cooperative efforts to act to prevent disruption of service to the public." However, as the Commission recognizes, this new interconnection agreement is one between Verizon and HTC, not between Verizon and "the public." Accordingly, the first sentence in HTC's second set of changes should instead read, "utilize reasonable cooperative efforts to act to prevent disruption of service to HTC's Customers." This language more accurately reflects the parties' obligations.

The Commission should not adopt the second sentence of HTC's proposed contractual language in § 12 stating, "[i]n the event that a Party elects to exercise rights in accordance with this provision, the electing Party assumes all related risks, responsibilities, and liability associated with its action in the event that it is subsequently determined that the other Party was not in default of this Agreement." For clarity and consistency throughout the new interconnection agreement, all language imposing liability should be confined to § 25 *et seq.* of the General Terms and Conditions. Additionally, should HTC be harmed by any action that Verizon might take in response to an HTC default, HTC may utilize standard remedy procedures available under both the new interconnection agreement and ordinary contract enforcement procedures.

What HTC is apparently seeking is a contractual cause of action for anticipatory breach or wrongful breach. Any remedy associated with such causes of action should instead be governed by applicable law – namely, South Carolina contract law and common law.

HTC's changes are unreasonable and unnecessary. Contrary to its unspecified and unsupported allegations about Verizon's "past actions" in disputes between the parties (Petition at 16), there is no need for the Commission to accord HTC any special protection against actions taken in response to HTC's default. The Commission should not be creating new causes of action in an interconnection agreement when existing law can address those disputes.

Discussion:

Regarding the issue of default, HTC proposes to allow sixty (60) instead of thirty (30) days for cure of an apparent default prior to more drastic action. We agree with Verizon that HTC has not offered any rationale as to why a sixty-day period is needed, when a thirty-day period – the typical length of a carrier's billing cycle – is standard in the industry. See, Appendix A to the Post Hearing Brief of Verizon South, Inc. at 17. We also agree with Verizon that it is unreasonable for the Commission to allow a CLEC "to continue to breach" for longer than thirty days after receipt of notice; the thirty-day cure period proposed by Verizon starts from the receipt of notice, not from the date of breach. Id.

HTC also seeks to add the following two sentences at the end of General Terms and Conditions Section 12:

> In the event of a default, the Parties will utilize reasonable cooperative efforts to act to prevent disruption of telecommunications service to HTC's customers. In the event that a Party elects to exercise rights in accordance with this provision, the electing Party assumes all related risks, responsibilities, and liability associated with its action in the event that it is subsequently determined that the other Party was not in default of this Agreement.

We adopt the first sentence mentioned above proposed by HTC. However, we do not adopt the second sentence proposed by HTC regarding all related risks, responsibilities, and liability associated with a default. We agree with Verizon that for clarity and consistency throughout the new interconnection agreement, all language imposing liability should be confined to Section 25 *et seq.* of the General Terms and Conditions. Further, if HTC is harmed by any action that Verizon might take in response to an HTC default, HTC may utilize standard remedy procedures available under both the new interconnections agreement and ordinary contract enforcement procedures. See, Appendix A to the Post-Hearing Brief of Verizon South, Inc. at 18.

ISSUE 7. BANKRUPTCY. What should the market procedures be when a carrier terminates service to the public as a result of bankruptcy?

HTC's Position:

HTC's position is that Verizon's proposed language discriminates in favor of Verizon by requiring notice to Verizon (but not to other potential carriers) when HTC discontinues service, and by specifically providing for the transition of customers to Verizon (but not to other potential carriers). See Petition at 16. HTC believes that all carriers in the marketplace will have an interest in the transition of service in the event of cessation of service by a carrier, not just the incumbent. HTC Pre-Hearing Brief at 22. Such matters are not appropriately addressed in an agreement between only two of the interested parties. Petition at 16-17.

In addition, HTC believes that the provision should be limited to bankruptcy or other emergency situations only, and that it should apply to both Verizon and HTC. Id. at 17-18; HTC Pre-Hearing Brief at 23-24. Verizon's language would apply when "HTC proposes to discontinue, or actually discontinues, its provision of service to all or substantially all of its Customers, whether voluntarily, as a result of bankruptcy, or for any other reason."

It is HTC's position that Verizon's proposed Section 13.0 is not appropriate for a bilateral agreement and that the entire section should be deleted. Petition at 17. In an effort to resolve the issue, however, HTC proposed modified language to Section 13.0 that addresses HTC's primary concerns. Id. at 17-18.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions §§ 13, 13.1, 13.2, 13.3, and 13.4, without the changes suggested by HTC.

HTC's objections to Verizon's proposed language in Section 13 are misplaced. Although HTC claims that it "does not object to competitively fair processes to address these emergency situations [when carriers exit the market] that would give all local service providers in a particular local market equal ability to acquire the customers of exiting carriers" (Petition at 16), that claim is inconsistent with HTC's proposed language. Contrary to HTC's claims, Verizon's proposed Section 13 does not attempt to secure for itself a competitive advantage. It merely requires that HTC provide written notice as required by law to all interested parties of its intention to exit the market, should it ever decide to do so. Those interested parties include the

Commission, Verizon and all of HTC's customers. Verizon is an interested party because it will provide the elements and services HTC uses to serve its customers and because it is the carrier of last resort. The proposed language does not require or assume HTC's former customers will become Verizon's customers, but rather provides that in the event a former HTC customer becomes a Verizon customer (by choice or by Commission order) when HTC exits the market, HTC will provide Verizon some basic information necessary to service that customer. Nothing in Verizon's proposed language keeps HTC from taking the same action or even more for other carriers.

It appears that HTC misunderstands applicable law. HTC seems to assume that there are laws, rules and regulations governing notice and migration procedures for affected customers when a carrier exits the market. This assumption is not accurate. In fact, the lack of legal guidance is exactly why the FCC issued a Public Notice in Northpoint Communications, where it admonished "all carriers to assist carriers that are discontinuing service in transitioning customers to other providers offering the same or comparable service in as seamless a manner as possible." In the Matter of Northpoint Communications, Inc. Application for Permanent Discontinuance of Service Pursuant to Section 63.3, 16 FCC Rcd 10844; 2001 FCC LEXIS 2843 *1 (May 22, 2001) ("Northpoint Public Notice").

HTC also, claims that notice and customer migration procedures "must be addressed in a public forum, not in a bilateral agreement." Petition at 17. The FCC's Public Notice, however, specifically directed ILECs and CLECs to "consider including in their interconnection and resale agreements as well as in other contractual arrangements, provisions that will ensure continued service by underlying service provider(s) in the event of a bankruptcy . . ." Northpoint Public Notice at *2.

HTC's attempt to limit the scope of Section 13 to bankruptcy only (rather than any discontinuation of service) is also misguided. The FCC's Public Notice advisement contemplates any discontinuation of service, whether bankruptcy "or other disability of a service provider" and confirmed that the provisions of 47 U.S.C. Section 214(a), regarding carriers' discontinuation or impairment of service apply "under all circumstances, including bankruptcy." Id. at *1.

Unlike HTC's proposal, Verizon's proposal accomplishes exactly what the law requires and ensures that customers will receive clear and sufficient notice of any service discontinuation. The Commission should adopt Verizon's proposal on this issue since it is consistent with directives from the FCC.

Discussion:

We adopt Verizon's proposed General Terms and Conditions Sections 13, 13.1, 13.2, 13.3, and 13.4, without the changes suggested by HTC. Verizon's proposed language requires that HTC provide written notice as required by law to all interested parties of its intention to exit the market. Further, Verizon's proposed language does not require or assume HTC's former customers will become Verizon's customers, but rather provides in the event a former HTC customer becomes a Verizon customer (by choice or by Commission order) when HTC exits the market, HTC will provide Verizon some basic information necessary to service that customer. See, Appendix A to the Post-Hearing Brief of Verizon South, Inc. at 21.

Furthermore, as Verizon appropriately pointed out, the FCC issued a Public Notice in Northpoint Communications, where it admonished "all carriers to assist carriers that are discontinuing service in transitioning customers to other providers offering the same or comparable service in as seamless a manner as possible." See, Appendix A to Post-Hearing Brief of Verizon South, Inc. at 21 and 22. We agree with Verizon that Verizon's proposal is consistent with the directives from the FCC.

ISSUE 8. FORECASTS. What should be the relationship between the Parties regarding forecasts of services and traffic?

HTC's Position:

HTC is willing to provide forecasts but, in light of past experience, wants some assurance that Verizon will actually use the forecasts HTC provides for some productive purpose. Petition at 18. Specifically, HTC expects that Verizon will make facilities available to HTC based on those forecasts. Id. Additionally, HTC seeks to ensure that the forecasting requirements do not disproportionately burden HTC. Id. Finally, HTC seeks to make some of the forecasting obligations – i.e., those that deal with the provisioning of two-way trunks – mutual. Id. at 19.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions § 16.0 and Interconnection Attachment 14.3, 14.3.1, 14.3.1.1, and 14.3.1.2, without the changes suggested by HTC.

Verizon's interconnection agreement requires that all CLECs submit good faith forecasts of the services they will require. Verizon needs these CLEC forecasts to make decisions regarding infrastructure planning, operational support readiness, human resources planning, and capital/expense budgeting. In addition, provisioning intervals are linked to CLEC forecasts for certain wholesale products. As the Commission is aware, forecasts are a critical component of the interconnection process and efficient network management. HTC's allegation that the provision of Verizon's available facilities would not depend on forecasts is simply false. Petition at 18. Indeed, HTC seems to recognize the need to "prepare and conduct forecasts," Id. and that the Parties' agreement should include general terms and conditions governing those forecasts but HTC refuses to agree to Verizon's reasonable language and procedures that are followed by other CLECs in South Carolina.

Under Verizon's proposed Section 16, HTC need only provide good faith non-binding forecasts of its forthcoming demand. Such forecasts need only be provided upon request, which usually occurs only semi-annually. Verizon's use of HTC's forecasts, moreover, is subject to the confidentiality provisions of the agreement and is limited to planning purposes. This is a standard forecast provision that any volume purchaser of services could expect to find in a commercially reasonable contract.

HTC's objections to Verizon's proposed language are purely speculative. Verizon has no interest in requiring and reviewing "forecast demands that have . . . no real productive purpose." Nor does it have an interest in incorporating "convoluted forecast requirements" merely to harass HTC. HTC has not offered even one example of a Verizon forecasting requirement that does not "achieve a productive purpose" or that "improperly burden[s] HTC disproportionately." Without the forecast information Verizon seeks, it cannot be expected to project and have available the network required to meet HTC's business plans.

HTC's witness testimony nevertheless creates the impression that the forecast language contained in the current interconnection agreement somehow imposed an obligation upon Verizon to actually use the forecasts to build new facilities for HTC's use. Despite Mr. Spainhour's assertions to the contrary, Verizon never agreed to do so and the law never required such action. Verizon's insistence upon the forecast provisions in the new interconnection agreement likewise does not create such an obligation. Iowa Utils. Bd. v. Fed. Communications Comm'n, 120 F.3d 753, Tab 1 at 813 (8th Cir. 1997) In his pre-filed testimony, Verizon's witness Peter J. D'Amico explained as follows:

> Mr. Spainhour complains that Verizon failed to provide HTC access to unbundled loops in accordance with HTC's forecasts. But as I understand issue 8, it is concerned with forecasts related to trunk provisioning. The proposed changes from HTC are in the interconnection attachment which has nothing to do with UNE loops. Even if HTC wants to address forecasting for UNE loops, the interconnection attachment is not the place to do it. This is an arbitration for a new interconnection agreement. HTC should not be allowed to use this as a forum to raise operational and implementation issues that happen under the previous agreement. As such, Mr. Spainhour's testimony on unbundled loops appears irrelevant to issue 8.
>
> Nevertheless, I understand that Verizon acted properly under the existing agreement. Mr. Spainhour appears to believe that by simply submitting a forecast, Verizon became obligated to build facilities to meet that forecast. (Spainhour DT at 8.) That is not what the Act or the interconnection agreement require. Rather, Verizon is required to provide HTC with access to its *existing* network, including, of course, unbundled loops. It has met this obligation.

> Verizon needs forecasts for various purposes (such as determining what future facilities HTC will need to connect to the Verizon tandem), but these purposes do not include building a new network for HTC. HTC's position would require Verizon to build whatever HTC says it may need, at Verizon's own cost, with Verizon taking the risk that HTC may not even need the forecasted facilities. This patently unreasonable outcome is not required by the Act. D'Amico Testimony at 2-3 (citing Spainhour Testimony at 8:8-16).

Addressing HTC's specific complaints about its marketing efforts in the Myrtle Beach area, and Verizon's "failed" forecasts in that regard, Mr. D'Amico went on to state:

> When Verizon began rejecting HTC's orders for leased loops "due to no facilities" in the Myrtle Beach area, it was simply stating fact: there were no more available existing unbundled loops in that area. While this may have affected HTC's plans, Verizon never promised that it would fulfill all of HTC's orders, regardless of facilities availability.
>
> Indeed, in the July 17, 2000 meeting Mr. Spainhour mentions (Spainhour DT at 9). Verizon made clear to HTC that it would make new unbundled loops available if and when Verizon made the business decision to deploy such new facilities or that HTC could pay Verizon to do so. Id. at 3-4 (citing Spainhour Testimony at 9:14-17).

Verizon simply never made the decision to deploy new facilities. Verizon cannot be faulted by the Commission in this arbitration proceeding for not doing something it was never required to do.

In addition to Verizon's general forecast provisions in section 16, HTC objects to Verizon's proposed Section 14.3 of the Interconnection Attachment addressing trunk forecasts. Accurate trunk forecasts are crucial to successful trunk provisioning and efficient network management. Verizon is under no legal obligation to build trunks and trunk-related facilities for HTC that it will not use. At a minimum, HTC must reasonably justify its need for trunks and be financially responsible to the extent it provides overly optimistic forecasts. Mr. D'Amico explained the problem as follows:

> Judging from the changes HTC proposes to Verizon's §§ 14.3 and 16.0 of the draft interconnection attachment, it appears that HTC wants to use trunk forecasts as a means to reserve facilities without paying for those facilities through firm service orders. In addition, HTC would require Verizon to provide a trunk forecast. These changes are plainly unreasonable, as well as contrary to the HTC's interconnection agreements with Verizon in other states. In those agreements, HTC has agreed to provide Verizon with semi-annual forecasts of both inbound and outbound traffic. Moreover, the forecast is only used to help Verizon make decisions regarding infrastructure planning, operational support, human resource planning, and capital budgeting. The forecasts submitted by HTC are not binding on HTC, and there are no penalties if HTC fails to meet its forecasts. Id. at 4.

In addition, because Verizon's network must accommodate all CLECs' needs, Verizon must have the ability to disconnect and reallocate unused or underutilized trunks. Verizon's language in Sections 14.3, 14.3.1 and 14.3.2 ensures satisfaction of these important concerns, and unlike HTC's language recognizes that the relevant obligations are not reciprocal. Because HTC is interconnecting with Verizon's network, only HTC will be submitting trunk orders. Indeed, HTC is in a far better position than Verizon to forecast both inbound and outbound traffic, "because HTC is the only party that knows to whom it will market its services." Id at 5. As Mr. D'Amico testified:

> This information, by far, has the greatest influence on the need for interconnection trunks that are required to carry calls from Verizon's network to HTC's network. For instance, if HTC targets customers who primarily receive calls, like Internet Service Providers ("ISPs"), and HTC knows that most of those calls will originate from Verizon's network, then only HTC knows how many trunks will be required for the traffic that originates on Verizon's network. Id.

For all these reasons, the Commission should order the parties to adopt Verizon's proposed language and should reject HTC's proposed changes.

Discussion:

We adopt Verizon's proposed General Terms and Conditions Section 16.0 and Interconnection Attachment 14.3, 14.3.1, 14.3.1.1, and 14.3.1.2, without the changes suggested by HTC. Verizon uses CLEC forecasts to make decisions regarding infrastructure planning, operational support readiness, human resources planning, and capital/expense budgeting. Moreover, forecasts are a critical component of the interconnection process and efficient network management. See, Appendix A to Post-Hearing Brief of Verizon South, Inc. at 24. If HTC becomes concerned that Verizon is burdening HTC with forecast demands that have no real productive purpose, then HTC needs to file a complaint regarding the forecast demands with the Commission. Trunk forecast are also important to determine which trunks are unused or underutilized. Id. at 27. We also agree with Verizon that HTC is in a better position to forecast inbound and outbound traffic, as HTC knows to whom it will market its services. Id. at 28.

ISSUE 9. LIABILITY LIMITATIONS. Should liability be limited where service disruption to HTC's customers results in harm to HTC or where Verizon otherwise violates statutory or regulatory obligations?

HTC's Position:

HTC again points to past experience to justify the need to go beyond traditional limitation of liability provisions in the new interconnection agreement. Petition at 10; Spainhour Direct Testimony at 10-13 (TR. at 15-18); Exhibit LS-1 (Hearing Exhibit 1). HTC asserts that it has been subjected to a pattern of conduct whereby the provision of services (usually UNE loops) has resulted in unwarranted delay, problems, and technical difficulties related to Verizon errors, which has harmed HTC's ability to market and provide services to the public. Id. HTC states that it has good reason to believe that Verizon's pattern of conduct will continue unless Verizon has motivation to improve, and that this motivation should be in the form of penalties paid directly to HTC for Verizon's failure to meet commitments. HTC Pre-Hearing Brief at 28. Specifically, HTC proposed to hold Verizon liable when HTC suffers harm as a result of acts or failure to act with respect to the initiation of services by Verizon, and when Verizon's actions or failure to act constitutes a violation of applicable statutory or regulatory obligations. Id. at 29.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions §§ 25.5.7, 25.5.8, and 25.5.9, without the changes suggested by HTC. HTC inappropriately seeks to introduce exceptions to the "limitation on liability" provisions that are binding only on Verizon. HTC's proposals are exceptionally broad and would essentially exclude from the limitation of liability provisions any liability for a provisioning delay (Section 25.5.7) or breach of Applicable Law (Section 25.5.8). It also appears that HTC seeks to recover consequential damages in addition to direct damages. Verizon cannot agree to HTC's proposed Section 25.5.7 and 25.5.8 for several reasons.

First, the Act does not mandate any general liability provisions, much less the onerous proposals HTC advances here. Verizon's proposed language is substantially the same as Verizon's tariffed limitation of liability language. This Commission-approved tariff language is an appropriate guide to what is sound and reasonable from a public policy and commercial standpoint. In particular, consequential damages have long been excluded from recovery against telephone utilities on public policy grounds. There is no reason to afford HTC and its customers greater recovery than Verizon's customers for similar acts or omissions.

Second, HTC's proposed language for Section 25.5.7 directly contradicts Verizon's Section 25.1 which defines a "Service Failure" subject to limited liability (e.g., direct damages). Because HTC has already agreed to Section 25.1, it cannot properly seek to introduce conflicting language that would make Verizon alone liable for consequential damages as the result of a service failure.

Third, Section 25.5.8 of HTC's proposal appears to be an attempt to turn every "violation of applicable statutory or regulatory obligations" into a breach of contract for which HTC alone could seek consequential damages. Once again, HTC seeks to secure rights that other CLECs do not have – in contravention of federal law that requires CLECs to be treated in a non-discriminatory fashion. If one party violates a statutory or regulatory obligation, the other party will have a remedy under applicable law. There is no need for the Commission to provide for special remedies for HTC alone through an interconnection contract.

Fourth, Verizon notes that HTC has attempted to buttress its proposed changes with citations to "Report Cards" that HTC claims are representative of the alleged "dismal service" that it has received from Verizon under the current interconnection agreement. Spainhour Testimony at 11. HTC essentially claims that Verizon has no incentive to provide quality service to HTC, given the competitive environment, and that its changes to Verizon's proposed language are necessary in order to prevent Verizon from hiding "behind traditional regulated environment limitations on liability." Id. at 13. There is one key problem with HTC's arguments on this point, however. HTC's "Report Cards" show that Verizon's performance has consistently improved over the time period submitted for the Commission's consideration. In short, the "Report Cards" hardly support HTC's position.

Verizon witnesses Rosemarie Clayton and Richard Rousey extensively rebutted HTC's assertions about Verizon's performance in their pre-filed testimony. In pertinent part, they state as follows:

> [I]f HTC truly believed that Verizon had disregarded its obligations under the terms of the parties' existing interconnection agreement, one would expect HTC to have sought enforcement from the Commission. Most of the problems that Mr. Spainhour describes have arisen out of the understandable technical difficulties occasioned by the interconnection of two different telecommunications networks with incompatible operating systems and procedures. HTC and Verizon have successfully worked together to rectify these difficulties as they arose. GTE (and subsequently, Verizon) responded to each of HTC's letters raising provisioning issues indicating either the steps that Verizon would take to correct the problems or that HTC's request sought more than what Verizon was legally required to provide. Verizon executives and other representatives met in person with HTC personnel twice (there have been more than 2 meetings, but only 2 meetings were attended by executives) over the last two years and have also conducted bi-weekly telephone conferences over that same period in order to improve provisioning efficiencies. As HTC's own "Report Cards" show, Verizon's performance under HTC's metrics has gradually improved to the point where it is now generally exceeding both HTC's self-generated target objectives as well as the Commission's standard intervals for the provisioning of services. Clayton and Rousey Testimony at 37-39 (citing Spainhour Testimony at 11:13-23; 12; 17:17-23; 25-26:1-8; 27:22-23; 281-4).

Ms. Clayton and Mr. Rousey also testified to several examples of how Verizon's performance with regard to the provisioning services has dramatically improved, with specific reference to HTC's "Report Cards":

> For the period May 28 through June 1, 2001, HTC listed two target objectives for processing line orders for its customers: a goal of 98% for converted lines being processed correctly (HTC's own target objective), and a goal of 85% for

> converted lines being processed on time (which mirrors the Commission's standard interval for Verizon's retail business). Over that period, HTC claimed that Verizon met the first target objective only 44% of the time and the second target objective only 67% of the time. But for the period January 28 through February 1, 2002, (just seven months after the first set of "Report Cards" was issued), Verizon was processing lines correctly 97% of the time--just 1% shy of HTC's self-generated target objective and well exceeding the Commission's 85% standard. Id. at 38.

Furthermore, when asked their opinion as to why HTC has complained that Verizon's performance in these areas has been "dismal," Ms. Clayton and Mr. Rousey responded as follows:

> We are not sure, but assume it's because HTC seeks to garner Commission support for its unreasonable proposals. As we explained, Verizon's performance is now exemplary, so there is no need for the extraordinary measures HTC seeks to impose. In addition, the "Report Cards" HTC relies upon do not necessarily reflect Verizon provisioning problems. HTC provides these weekly Report Cards to Verizon showing all orders completed that week and offering HTC's assessment of the cause of any problems. The problems HTC identified may have been due to a number of causes: implementation of new network requirements or interconnections, HTC's misinterpretation of Verizon Business Rules, Verizon's system or process disconnects or HTC or Verizon employee error. Verizon has worked diligently to identify the true cause of the problems identified in the Report Cards and to resolve any issues identified—whether they originated with Verizon or with HTC. This effort has required reviewing processes and procedures with HTC as well as resolving Verizon process, system or employee issues. The effectiveness of these efforts is reflected in the improvement noted previously. Id. at 38-39.

Ms. Clayton and Mr. Rousey go on to provide a number of examples from HTC's "Report Cards" that show that Verizon was not the cause of a particular performance deficiency cited by HTC. Id. at 39-41. Indeed, in many instances, HTC's "marks" were erroneously low.

Consistent with the testimony of Ms. Clayton and Mr. Rousey, Verizon witness Randall Sims further testified that the parties agreed to drop measurement of on-time confirmations, one of the three original measures which originally appear on HTC's report cards, because Verizon's performance was so consistently satisfactory that the measure was no longer necessary. Tr. at 289-90. On a second measure, "processed on time," Mr. Sims explained that Verizon has consistently met HTC's objective over the past several months for all but one week and the measure is seldom discussed between the parties. Id. at 290. With regard to the third measure, Mr. Sims explained that even per HTC's measurements, Verizon's performance has been improving and the parties have been working together to improve performance, including on the executive level. Id. at 291-92. HTC declined a visit by Verizon's executives to Myrtle Beach and has not taken advantage of their offer for direct contact anytime HTC perceives a service problem. Id. at 291. HTC's assertions that Verizon's performance has been unsatisfactory and the additional performance incentive are necessary is simply not correct.

Fifth, Verizon is already subject to the FCC's Carrier-to-Carrier Performance Assurance Plan adopted as an integral component of the FCC's Bell Atlantic/GTE merger conditions. As Mr. Sims explained at the hearing, the FCC Performance Plan requires Verizon to publicly report on 17 measures and 158 submeasures. Id. at 292. If Verizon does not provide parity service or service otherwise in accordance with the FCC's pre-set benchmarks, Verizon may be required to pay up to $1.164 billion to the U.S. Treasury over a three year period. See ¶16 of the Conditions for Bell Atlantic/GTE Merger attached to Verizon's Post-Hearing Brief as Appendix B. The FCC Performance Plan, adopted from an earlier California Public Utilities Commission performance plan is comprehensive and measures Verizon's performance on such critical functions as pre-ordering, ordering, maintenance, billing and network performance. TR. at 292. The incentives the FCC plan provides are more than enough to ensure that HTC will receive a high level of service from Verizon and are much more comprehensive than plans contained in some of Verizon's now outdated "first generation" interconnection agreements.See e.g., the Direct Measures of Quality in Attachment 12 of Verizon's interconnection agreement with AT&T Communications of the Southern States.

For all of these reasons, the Commission should order the parties to adopt Verizon's proposed language, without the changes suggested by HTC.

Discussion:

We adopt Verizon's proposed Section 25.5 of the General Terms and Conditions, without the addition of HTC's proposed Sections 25.5.7, 25.5.8, and 25.5.9. The Telecommunications Act does not require any general liability provisions on local exchange carriers. The Commission will consider liabilities limitations/remedies in a generic proceeding. In the interim, HTC and Verizon shall incorporate in their interconnection agreement the performance measures and remedies from the AT&T/GTE South, Inc. negotiated agreement currently on file with the Commission

ISSUE 10. INTERCEPT ANNOUNCEMENT. What should the terms be for the provision of an intercept announcement when an end user changes from one service provider to another and changes his or her telephone number?

HTC's Position:

HTC's position is that the terms, timetables, and expectations regarding intercept announcement messages should be set forth explicitly in the agreement and that there should be certainty in these terms. Petition at 22. Moreover, the agreement should confirm that there will

be no charges between the Parties for intercept announcements. Id.
Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Additional Services Attachment §§ 6.0, 6.1, and 6.2, without the changes suggested by HTC. This issue concerns referral announcements provided to customers when they switch providers and do not retain their existing telephone numbers. Referral announcements are not telecommunications services under the Act. Verizon is not required to offer them for resale or to unbundle them. Nevertheless, Verizon is willing to provide intercept announcements services to HTC's customers at parity with the service Verizon provides to its own customers. Verizon is not willing, nor is it required to, tailor customer services for HTC's customers. Referral announcements are not a telecommunications service subject to resale as defined in the Act, 47 U.S.C. Section 153(43) at Tab 3, nor are they unbundled network elements. Rather, referral announcements are an information service as defined in the Act, 47 U.S.C. Section 153(20), Tab 3, that Verizon may elect not to provide.

As a compromise between the parties' competing language shown above, Verizon has proposed the following simplified language:

> Verizon shall provide Referral Announcements to HTC for HTC Customers on the same basis and terms, and for the same length of time, as such service is provided to similarly situated Verizon Customers, provided that if a longer time period is required by Applicable Law, such longer time period shall apply. Except as otherwise provided by Applicable Law, the period for a Referral Announcement may be shortened by the Party formerly providing service if a number shortage condition requires reassignment of the telephone number.

HTC, however, continues to insist upon the more detailed provisions quoted above, such that Verizon is compelled to advocate its proposed language, immediately quoted above, in this arbitration.

Verizon's proposed language in Section 6.1 and 6.2 tracks its current practices and procedures. In response to HTC's testimony that Verizon should not be allowed "the opportunity to change" its practice of offering intercept announcements, Verizon witness Kim Wiklund rebutted HTC's premise and advised the Commission as follows:

> Verizon will continue to offer intercept service at parity with the service that it provides to its own customers and other carriers, as provided by applicable law. Mr. Watkins' fear that Verizon will arbitrarily change the intercept announcement services provided to HTC is completely unfounded. Verizon's proposed Sections 6.1 and 6.2 define its current, nondiscriminatory practices and procedures regarding referral periods.
>
> * * *
>
> HTC proposed language, on the other hand, is so specific – asking for a referral period "not less than ninety (90) days – that it would prevent Verizon from modifying its intercept announcement practices based on a change of law or good faith business decisions.

> Mr. Watkins' proposal also assumes, incorrectly, that the Act requires Verizon to tailor its consumer services to fit HTC's business plan. This is not true. Verizon is obligated only to provide the same level and quality of service that it provides to its own customers. In South Carolina, Verizon currently offers referral announcements to its customers for up to ninety days, which can be shortened if a number shortage exists. Verizon cannot include a fixed ninety-day term in the Interconnection Agreement because it may be necessary for Verizon to shorten that period for legitimate reasons, such as a number shortage, or to address the needs of its customers and other CLECs. It is not reasonable for HTC to demand a different level of service than Verizon provides to its own customers and other CLECs. Wiklund Testimony at 10-11 (citing HTC Proposed Additional Services Attachment, Section 6.2).

HTC essentially seeks from the Commission additional representations as to service initiation and timing of referral announcements that would effectively prevent Verizon from modifying its referral practices in accordance with applicable law and its business decisions. As an example, Verizon currently provides referral announcements in South Carolina to residential customers for up to ninety days. Under Verizon's proposed parity language, Verizon would do the same for HTC's customers. However, Verizon is not willing to agree to a ninety-day period by contract because it may be required to change its practices in the future. Number shortages in the future, for example, might compel Verizon to move to a shorter referral period. Thus, if HTC insists on including specific language, Verizon can only agree to "not less than thirty days."

In its pre-filed testimony, HTC also asserts that it has documented Verizon's "inadequate intercept service," a characterization Verizon strongly rejects. As Ms. Wiklund noted:

> This claim is completely unfounded. If there were any basis for it, HTC should have followed the dispute resolution procedures under the old agreement or complained to the Commission before now. As I stated previously, Verizon has consistently provided a level of intercept announcement service to HTC and other carriers equal to the level of service that it provides to its own customers, and it will continue to do so in the future. In fact, Verizon's proposed section 6.3 ensures that it will continue to provide customer services at parity, which is all that is required of Verizon under the Act. Id. at 12.

Specifically, Verizon's language in Section 6.3 assures parity because Verizon does not currently charge customers for referral announcements. If, however, this practice changes in the future for Verizon's own customers, then Verizon should be permitted to charge HTC the same (tariffed) rates it charges its own customers. Thus, it cannot agree to HTC's language locking in free referral announcements.

For all of these reasons, the Commission should order the parties to adopt Verizon's proposed language, without the changes suggested by HTC.

Discussion:

We adopt Verizon's proposed Additional Services Attachment Sections 6.0, 6.1, and 6.2, without the changes suggested by HTC. Additionally, we adopt the following language proposed by Verizon:

> Verizon shall provide Referral Announcements to HTC for HTC Customers on the same basis and terms, and for the same length of time, as such service is provided to similarly situated Verizon Customers, provided that if a longer time period is required by Applicable Law, such longer time period shall apply. Except as otherwise provided by Applicable Law, the period for a Referral Announcement may be shortened by the Party formerly providing service if a number shortage condition requires reassignment of the telephone number.

As previously noted by Verizon, referral announcements are not telecommunications services under the Act; Verizon is not required to offer them for resale or to unbundle them. See Appendix A to Pre-Hearing Brief of Verizon South, Inc. at 35. However, because Verizon has stated that it is willing to provide intercept announcement services to HTC, Verizon is only required to provide intercept announcement to HTC's customers at parity with the service Verizon provides to its own customers.

ISSUE 11. TRANSITION OF EXISTING SERVICE ARRANGEMENTS. How should service arrangements in place under existing conditions be transitioned to the new agreement?

HTC's Position:

This issue relates to DS-1 loops that HTC asserts Verizon wrongfully refused to provide pursuant to the 1998 Interconnection Agreement. In order to provide those services in response to customer demand, HTC states it was forced to order them out of Verizon's tariff at much higher rates than those originally quoted to HTC. Petition at 23; Spainhour Direct Testimony at 13-15 (TR. at 18-20). Under the proposed agreement, Verizon would now charge HTC to transition those services away from the tariff. HTC's position is that it should never have had to purchase those services from the tariff to begin with, and should not have to pay conversion charges now. Id.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions §§ 33.2 and 33.3, without the changes suggested by HTC.

With this issue, it appears that HTC seeks to incorporate into the new interconnection agreement terms and conditions governing the "conversion" of certain access facilities (that is, T-1 or DS-1 loops) to UNE loops. Apparently, HTC does not object to Verizon's proposed Section 33 of the General Terms and Conditions, which already addresses the impact of the new interconnection agreement on existing agreements between the parties. Rather, it appears that HTC seeks, without actually proposing any specific language, to add language to Section 33 that would govern "conversion" of the aforementioned access facilities to DS-1 UNE loops. Verizon does not object to HTC converting such loops. It does, however, object to including language to this effect in Section 33 because it is unnecessary. Verizon likewise objects to HTC's request that the Commission should order Verizon to convert the facilities at issue to UNEs free of charge.

HTC has framed this issue in a way that implies that the "conversion" issue is complicated and implicates other issues in this arbitration. That is not the case. HTC seeks to convert certain existing DS-1 loop facilities, which it obtained from Verizon's applicable access tariff, to DS-1 UNE loops and, thereby, avail itself of lower UNE rates on the existing facilities.

The decision to convert access facilities to UNE loops is entirely within HTC's control. It can submit to Verizon an Access Service Request (ASR) to disconnect its existing access services and, simultaneously, submit a Local Service Order (LSR) under the new interconnection agreement to reconnect those facilities as unbundled network elements. Specific contractual terms describing this disconnect/connect ordering process are not necessary; the new interconnection agreement already contains applicable UNE terms and rates that will apply upon conversion.

For any such conversion, HTC is and should remain liable for any applicable termination charges in the tariff from which it ordered the DS-1 access loops; and HTC is and should remain liable for any applicable UNE charges, including non-recurring charges (NRCs), in the new interconnection agreement. HTC is not entitled to convert these facilities without paying tariffed termination charges and/or any UNE NRCs that apply under the new interconnection agreement.

HTC has long agreed that its existing DS-1 loops were to be provisioned pursuant to tariffed volume and term discounts, and that the early termination penalties in that tariff would apply. Clearly, the terms of that tariff determine whether HTC must pay early termination charges. If HTC believes that the Commission-approved tariff charges are not just or reasonable, this arbitration proceeding is not the appropriate forum to address this issue. See, e.g., Memorandum Opinion and Order, Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Arbitration to Provide In-Region InterLATA Services in Pennsylvania, CC Docket No. 01-138, 16 FCC Rcd 17419, at Tab 11, n. 268.

Likewise, HTC remains responsible for paying applicable contract charges (both monthly and non-recurring) associated with conversion of DS-1 access loops to DS-1 UNE loops. Verizon has no obligation to incur costs on HTC's behalf without recovering those costs from HTC. In order to complete the conversion of DS-1 access loops to DS-1 UNE loops, Verizon will have to first convert the "circuit identifications" for each converted loop in its internal billing systems. Verizon then will have to "re-tag" each of HTC's converted circuits within the appropriate central office. This conversion process on a particular loop will require a "field visit" by a Verizon technician. Verizon should be compensated for these and any other costs it incurs in conducting such work on behalf of HTC. The Commission thus should reject HTC's request and order it to pay the contractual UNE rates, including NRCs, for any conversion.

HTC's testimony completely misrepresents the parties' history in this area, asserting that the current interconnection agreement required Verizon to provide HTC with UNE DS-1 loops. Given Verizon's failure to make good on that alleged "obligation," HTC insists, it should not now be required to pay for the conversion of DS-1 loops obtained under Verizon's tariff to UNE DS-1 loops under the new interconnection agreement. If HTC really believed it had the right to UNE DS-1 loops all along, the Commission might reasonably ask why HTC did not take the matter to the Commission when Verizon refused to recognize this alleged "right." The reason is clear: HTC never had a right to UNE DS-1 loops in the first place. Ms. Clayton and Mr. Rousey testified as follows:

> Any confusion or disruption HTC raises with regard to the provisioning of UNE DS-1 loops resulted entirely from HTC's failure to read the parties' current interconnection agreement. That agreement does not allow HTC to order UNE DS-1 loops. As Mr. Spainhour is well aware, the current interconnection agreement is in large part based upon a GTE template interconnection agreement that the parties used during their negotiations several years ago. ***However, the GTE template's terms pertaining to UNE DS-1 loops and rates were explicitly superseded at the conclusion of the Parties' negotiations. Indeed, the Parties agreed to adopt new terms in their place from a separate GTE/AT&T-SC interconnection agreement that did not even address UNE DS-1 loops or appropriate rates for them.*** Accordingly, Mr. Spainhour's assertions (1) that the current interconnection agreement provides that applicable rates for UNE DS-1 loops were to be treated as "TBD (To Be Determined)," and (2) that he therefore took steps to determine the applicable rates under the current interconnection agreement, are disingenuous at best. In short, there were no rates to determine for UNE DS-1 loops because HTC had no right to order UNE DS-1 loops in the first place. Clayton and Rousey Testimony at 6:3-6; 14:19-23; 15:1-14.

Ms. Clayton and Mr. Rousey also provided the Commission additional detail on this history with a level of specificity notably absent from HTC's testimony:

> As Mr. Spainhour is well aware, the current interconnection agreement is based on a GTE template interconnection agreement. That GTE template contained terms and conditions for UNE DS-1 loops along with several other UNE loop products--such as 2-wire digital loops, 4-wire analog voice grade loops, etc. The provision pertaining to UNE DS-1 loops, set forth in Article VII, Section 4.2.5, references "Appendix D" for the applicable rate. Appendix D, in turn, provides that the applicable rate for UNE DS-1 loops is "TBD."
>
> GTE and HTC struck a deal to avoid arbitration on the GTE template, essentially allowing HTC to incorporate into the template certain UNE-related terms, conditions, and prices from GTE's arbitrated agreement with AT&T here in South Carolina. The effect of this "cut and paste" effort on the final GTE/HTC negotiated agreement was as follows:

> First, the above-referenced UNE loop product descriptions in the GTE template, including the description of DS-1 loop, were expressly "superseded" by a new Article III, Section 46 and Appendix. HTC agreed to this approach because it wanted the lower arbitrated UNE rates AT&T obtained. Moreover, as the parties subsequently discovered, the superseding AT&T pricing schedule did not contain Verizon's standard non-recurring charges ("NRCs") for UNE provisioning. HTC thus continues to refuse to pay UNE-related NRCs billed by Verizon.
>
> ***Second, while HTC relies heavily on the superseding terms from the GTE/AT&T agreement, this language does not provide for UNE DS-1 loops or DS-1 loop pricing. Thus, while HTC subsequently indicated that it wanted UNE DS-1 loops, it had no terms, conditions, or rates from which to order them. Verizon offered to amend the current interconnection agreement to provide for DS-1 loops, but HTC has never followed through-- perhaps because it feared that Verizon would use an amendment to definitively reinstate the NRCs associated with UNE provisioning. HTC instead has elected to order DS-1 loops out of Verizon's access tariffs. That is why HTC today has DS-1 access circuits priced at the access tariff rates***.
>
> Third, now that the parties are negotiating a new agreement, all of this history has re-emerged. Verizon seeks to more clearly reinstate the NRCs associated with UNE provisioning and the new agreement would provide HTC with the contractual right to UNE DS-1 loops that it now lacks. HTC's conversion of DS-1 access circuits obtained out of Verizon's tariff would be governed by the new UNE DS-1 terms in this new agreement. While HTC wants this result, it still maintains that it should not have to pay the associated NRCs because such NRCs were not contained in the current AT&T terms. That is why HTC now argues for the right to convert the DS-1 access circuits to DS-1 UNE terms, but still requests that the Commission require Verizon to justify its UNE NRCs. HTC's position is patently inequitable and should be rejected. Id. at 11-12 (emphasis added).

When Ms. Clayton and Mr. Rousey were questioned about HTC's assertions about the provisioning of UNE DS-1 loops with specific reference to Issue 11, they testified as follows:

> Mr. Spainhour persists in his "confusion" about what UNEs HTC is entitled to under the current interconnection agreement. ***HTC is not and never has been entitled to order UNE DS-1 loops out of that agreement. Accordingly, it has voluntarily ordered them out of Verizon's tariff -- its only option under the circumstances. Consequently, Mr. Spainhour is wrong in claiming that Verizon is attempting to impose in the new agreement an unwarranted conversion charge (really a standard UNE NRC). Since HTC never had the right to order UNE DS-1 loops under the current interconnection agreement, and since it exercised its option to order them through Verizon's tariff instead, Verizon has the right to impose the appropriate UNE NRC charge for a conversion to the UNE offering under the new agreement. As we noted previously, any***

> ***conversion by HTC of DS-1 access circuits obtained out of Verizon's tariff would be governed by the new UNE DS-1 terms in the new agreement.***
>
> Mr. Spainhour cites pages 38-39 of Verizon's Response to HTC's Petition in this regard, which states that, HTC "can submit to Verizon an Access Service Request (ASR) to disconnect its existing access services and, simultaneously, submit a Local Service Request (LSR) under the new Agreement to reconnect those services as unbundled network elements. Specific contractual terms describing this disconnect/connect ordering process are not necessary; the Agreement already contains applicable terms and rates that will apply upon conversion." Mr. Spainhour mischaracterizes this statement as a "concession" by Verizon when it is simply a statement of how the new agreement will allow HTC to convert the tariffed DS-1 access circuits to UNE DS-1 loops. Once again, the applicable UNE NRC charge in this regard is appropriate because HTC never had a right to UNE DS-1 loops in the first place, and because any conversion necessarily will impose costs upon Verizon.
>
> Those costs are not *de minimis*. As explained on pages 39-40 of Verizon's response:
>
>> HTC remains responsible for paying applicable contract charges (both recurring and non-recurring) associated with conversion of DS-1 access loops to DS-1 UNE loops. Verizon has no obligation to incur costs on HTC's behalf without recovering those costs from HTC. In order to complete [these conversions], Verizon will have to first convert the 'circuit identifications' for each converted loop in its internal billing systems. Second, Verizon will have to 're-tag' each of HTC's converted circuits within the appropriate central office. The conversion process on a particular loop will require a "field visit" by a Verizon technician.

Furthermore, Verizon also will incur costs for order processing -- an aspect of conversions not mentioned in Verizon's Response.

> Finally, Mr. Spainhour testifies that he contacted Verizon's HTC account manager as to how to proceed with the conversions, and that "to date" he has not received a response other than to refer him to the access tariff. The simple reason for that is that HTC still cannot convert its existing DS-1 access circuits due to the lack of terms and conditions of the current interconnection agreement. Once the new agreement is in place, Verizon will provide HTC all of the information it needs on how to convert its DS-1 access circuits to UNE DS-1 loops. Id. (citing Spainhour Testimony at 11-12; 13:18-23; 14-15:1-14) (emphasis added)

For all of these reasons, the Commission should order the parties to adopt Verizon's proposed language, without the changes suggested by HTC.

Discussion:

The Parties dispute whether or not DS-1 loops were provided for in the original interconnection agreement. See Spainhour Direct Testimony at 14 (TR. at 19); Clayton/Rousey Direct Testimony at 10 (TR. at 128). The Parties do not appear to dispute that DS-1 loops were initially contemplated by the Parties as a UNE, and were contained on an initial schedule of UNEs to be provided by Verizon to HTC, with a price "to be determined." At some point, however, the Parties decided to adopt the UNE rates that were ordered by the Commission in the Verizon/AT&T Arbitration. See Clayton/Rousey Direct Testimony at 10 (TR. at 128 and 129). The new schedule of rates that was adopted did not list DS-1 loops as a UNE. Id. This has led to the current confusion over whether DS-1 loops were provided for in the original agreement. Verizon states they were not, because the new schedule superseded the old schedule. Id. HTC states that it did have a right to the DS-1s, because the new schedule was intended to supersede the old only with respect to rates. See Spainhour Rebuttal Testimony at 2-3 (TR. at 39-40). According to Mr. Spainhour, during negotiation of the 1998 Interconnection Agreement, there was never a question raised with respect to the availability of DS-1s, as shown on Verizon's UNE list. Id. HTC wanted the ability to purchase DS-1s and Verizon was willing to provide them. Id. Furthermore, even if DS-1s were not specifically provided for in the agreement, Verizon quoted HTC an "established" rate for DS-1s. Id. at 3-4 (TR. at 40-41); Exhibit LS-7 (Hearing Exhibit 2). Verizon has conceded that it has established UNE DS-1 rates for "another CLEC doing business with Verizon in South Carolina." See Clayton/Rousey Direct Testimony at 13 (TR. at 131). HTC asserts that, if Verizon was providing DS-1 loops to another CLEC, HTC had a right to obtain DS-1s from Verizon at the same rates pursuant to Section 252(i) of the

Act. Watkins Rebuttal Testimony at 11-12 (TR. at 105-06).

We agree with HTC that HTC had a right to obtain DS-1s under the existing agreement but was denied the ability to do so. HTC acted reasonably in ordering DS-1 loops out of Verizon's tariff in response to customer demand and in light of Verizon's refusal to provide DS-1 loops under the agreement. We do not believe HTC should now be required to pay conversion fees or early termination charges to transition those services from the tariff to the agreement.

The Commission will address rates for DS-1 loops in a generic proceeding in the future. Verizon has conceded that it has established UNE DS-1 rates for "another CLEC doing business with Verizon in South Carolina." Tr. at 131. In the interim, Verizon and HTC are instructed to incorporate language in their interconnection agreement which includes the rates of DS-1 loops mentioned on page 13 (TR. at 131) of the Direct Testimony of Clayton and Rousey.

ISSUE 12. INCUMBENT v. NON-INCUMBENT REQUIREMENTS. How should the agreement recognize that the requirements of Section 251(c) of the Act do not apply to non-incumbent LECs such as HTC?

HTC's Position:

HTC's position is that it should be clarified in the agreement that HTC is not an incumbent LEC and does not have the same obligations as an incumbent LEC. Petition at 23-24. HTC states that there are several provisions throughout the lengthy and complex proposed agreement that suggest HTC is subject to requirements that arise only with respect to incumbent LECs. Id. at 23. While HTC has attempted to address these in negotiations and in the pleadings on a case-by-case basis, HTC feels some general clarifying statement is needed. Id. at 23-24. While HTC may agree in specific instances to voluntarily provide a service it is not legally obligated to perform, such agreement must be specific and clear. Id. at 24.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions § 37.1, without the changes suggested by HTC. Although HTC has offered to remove the word "involuntarily" from its proposed language, that is only the beginning of the problem. Watkins Testimony at 17. Indeed, the whole of HTC's proposed addition to Section 37.1 is nonsensical. HTC does not define what "additional interconnection arrangements" are, the language that HTC proposes is overly broad, and HTC's witness testimony contradicts that language. In short, HTC's proposal is hopelessly confusing.

HTC asserts that it is trying to ensure that it does not agree to any statutory obligation of an ILEC. However, HTC appears to be seeking a means of escaping some of the very contract provisions to which it has already voluntarily agreed. HTC is responsible for understanding the meaning of the provisions it negotiates, including whether they apply to both parties or only to Verizon. HTC cannot reasonably expect the Commission to adopt an escape clause to protect HTC from inattention or any other negligence in the negotiations process. Verizon has several concerns in this regard.

First, the language that HTC has proposed is confusing because it is unclear what HTC means by "additional interconnection arrangements." As written, the provision appears to allow HTC to avoid negotiating in good faith any provision that it deems to be applicable only to "incumbent local exchange carriers." As a practical matter, however, it would be impossible to administer such a vague provision. While parties to a contract can agree to any terms they wish, including requirements that are not specified in the Act, HTC's language does not encompass this possibility.

Second, while Verizon understands the thrust of HTC's argument that it should not be bound by "ILEC-only" obligations, HTC's proposed language is extremely broad -- so broad that it would effectively absolve HTC from having to read, understand, and negotiate the terms of the agreement. If HTC believes that Verizon is attempting to impose ILEC-only provisions upon HTC, then HTC should provide specific examples so they can be addressed and resolved through the negotiations process. If a provision as broad as the one HTC proposes is incorporated into the agreement, however, it is uncertain how far HTC might attempt to stretch it in order avoid its contractual obligations.

Third, HTC's proposed language is inconsistent with HTC's witness testimony. On page 9 at note 5 of his testimony, Mr. Watkins states:

> It should also be observed here that the Act expects that parties will negotiate voluntarily without regard to the interconnection duties, requirements, and standards set forth in Section 251(b) and (c). See 47 U.S.C. § 252(a)(1). In contrast, in an arbitration proceeding, a state commission is limited to resolving the open issues only in a manner that is consistent with the requirements of Section 251 of the Act. See 47 U.S.C. § 252(c). While in this case the voluntary negotiation positions of HTC are the same as its arbitration positions, the Act clearly contemplates that the course of voluntary negotiation and mandatory arbitration need not necessarily be the same.

In other words, HTC acknowledges that parties can voluntarily agree to provisions that embody rights/obligations outside or beyond those otherwise imposed by the Act. Curiously, HTC's proposed language appears to foreclose that very possibility.

For all of these reasons, the Commission should reject HTC's proposed language as both unfair and unworkable.

Discussion:

This seems to be an area where the Parties are in agreement on the concepts involved, but cannot come to terms with the language. Both Parties agree that the Act provides for certain obligations that apply only to incumbent LECs. See Section 251(c) of the Act. Both Parties agree that HTC, as a non-incumbent LEC, does not have a legal obligation to provide those services. Both Parties agree that, notwithstanding the fact that it has no legal obligation to do so, HTC may voluntarily agree to provide certain services and, once it does so in an agreement, it becomes contractually obligated to provide them. Verizon believes that HTC's language is an "escape" clause that would allow HTC to avoid its contractual (as opposed to legal) obligations. Response at 42. We disagree. HTC's language expressly states that HTC will not be obligated involuntarily to provide services pursuant to Section 251(c) of the Act. HTC is not attempting to abrogate its voluntary undertaking of obligations under the Agreement. See Petition at 24; Watkins Direct Testimony at 17 (TR. at 65). It merely does not want the agreement to be construed in such a way as to impose incumbent LEC obligations involuntarily on HTC. We find that this is reasonable and adopt HTC's clarifying language in Section 37 of the General Terms as follows:

> Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement obligates HTC to provide to Verizon any of the additional interconnection arrangements, services, or network elements that arise pursuant to Section 251(c) of the Act that generally apply only to incumbent local exchange carriers.

ISSUE 13. TAXES. How should the provisions regarding tax implications between the Parties be clarified to avoid possible confusion?

HTC's Position:

HTC's position is that the inclusion in the agreement of lengthy terms and conditions regarding taxes is potentially misleading, and it should be stated that there are no intended or expected tax implications with respect to the agreement. Petition at 24. HTC also requests a provision stating that, in the event a tax or fee is contested by a Party, the other Party will cooperate fully and shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting with such contest. Id. at 25.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions § 41.0, without the two additional paragraphs HTC proposes to insert at the beginning of the portion of the new interconnection agreement intended to address tax obligations. The undisputed portions of Section 41 already comprehensively set forth the responsibilities of the Parties with respect to federal, state and local taxes applicable to the provision of telecommunications services. They recognize the possibility that taxes may be levied on the services provided under the new interconnection agreement. Even though HTC does not disagree with any of those provisions, HTC's misleading introductory paragraphs state that no taxes apply to the Parties or to the subject matter of the new interconnection agreement. The existing undisputed provisions in Section 41, however, recognize the possibility that taxes may be levied on the services provided under the new interconnection agreement. HTC's conflicting language is misleading and should not be adopted by the Commission.

HTC also proposes language that would require reimbursement for certain expenses incurred in cooperating with a Party's challenge to a tax or fee. This provision is nothing more than a penalty imposed on the non-contesting party. Before requiring either Party to pay expenses related to a tax challenged, it is important to evaluate which Party stands to benefit if the challenge succeeds. This will depend on the nature of the particular dispute and cannot be determined in advance. Verizon's existing language thoroughly addresses taxes and financial responsibility and should be adopted without modification by the Commission.

Discussion:

HTC's proposed clarifying language is reasonable. It does not provide, as Verizon asserts, that no taxes will apply to the Parties or to the subject matter of the new interconnection agreement. Petition at 25. It merely provides that it is the Parties' understanding that there are no taxes specifically applicable to the subject matter of the agreement that would not otherwise be applicable to each respective Party. This clarifying language helps to put the remainder of the tax provisions into context. Furthermore, it is reasonable to expect that a non-contesting party who assists a contesting party in challenging a tax or fee should be reimbursed for the reasonable out-of-pocket expenses associated with such assistance. We, therefore, adopt HTC's proposed language in Section 41 as follows:

> It is the mutual understanding of the Parties to this Agreement that there are no taxes specifically applicable to the subject matter of this Agreement or to either Party as a result of entering into this Agreement that would not otherwise be applicable to each respective Party. In the event that any government authority, however, determines to the contrary that a tax or taxes are applicable to the subject matter of this Agreement, then the following provisions will apply.
>
> In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

ISSUE 14. UNE AVAILABILITY. Under what conditions should Verizon be required to provide unbundled network elements to HTC?

HTC's Position:

HTC's position is that, beginning with Section 42 of the General Terms, Verizon includes language in several places throughout the agreement that would allow Verizon to reconfigure its network in ways that would then deny HTC of UNEs that previously would have been available to HTC. Petition at 25. This argument is predicated on the assertion, as discussed in Section IV herein, that Verizon agreed under the 1998 Interconnection Agreement to take the affirmative steps necessary to provide access to unbundled loops where remote facilities are involved. According to HTC, it configured its network in reliance on Verizon's assurances, and Verizon should not be permitted to continue to thwart HTC's competitive efforts by hindering HTC's access to unbundled loops or causing HTC to reconfigure its network at the expense of HTC. See Spainhour Direct Testimony at 18-19 (TR. at 23-24).

HTC further takes the position that Verizon's language would allow the current situation, whereby HTC customers served by remote facilities experience slower transmission speeds than they did as Verizon customers, to continue. See Petition at 26-27. HTC's position is that Verizon must provide loop transmission capabilities for UNE loops to HTC that are equal to those that Verizon provided to its own customer. Id.

In addition, HTC takes issue with Verizon's proposed language in Section 1.2 of the Network Elements Attachment. HTC claims that the vague provisions would deny UNEs to HTC in the future for customers or services that are not currently in existence, in violation of the Act. Id. at 26. Even if Verizon could deny services to a new customer, HTC states it is inappropriate for Verizon to limit HTC's communications with that customer as proposed by Verizon. Id. HTC asserts it should not be penalized with future refusal of UNEs by Verizon for speaking truthfully to potential customers. Id.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed General Terms and Conditions §§ 42.0, 42.1, 42.2, 42.3, 42.4, 42.5, and 42.6, and Network Elements Attachment § 3.18, without the changes suggested by HTC. Until this Petition was filed, Verizon had not seen most of the extensive language that HTC has now proposed for § 42 of the General Terms and Conditions. Inasmuch as significant portions of HTC's § 42 proposal appear for the first time in HTC's Petition, this issue is not ripe for adjudication. Under the Act, HTC is required to negotiate in good faith for at least 135 days before it can seek arbitration. The Commission should thus decline to resolve this issue and direct HTC to first try to resolve it through negotiation.

If the Commission is inclined to resolve this issue, despite HTC's failure to comply with the Act, HTC's position must be rejected on substantive grounds. As Ms. Clayton and Mr. Rousey testified:

> It seems that the real issue is HTC's apparent dissatisfaction with Verizon's past provisioning of collocation space for access to UNEs. Instead of bringing such claims to the Commission for resolution under established procedures, however, HTC inappropriately injects these allegations into this arbitration proceeding. This tack fails to support HTC's proposed contract language, it provides no useful information for the Commission in resolving the arbitration issues, and it makes it particularly difficult to respond to HTC's proposals.
>
> HTC's proposed language, if adopted, would go much further than the positions HTC seems to be advocating. Although HTC seeks primarily to ensure it would have "availability of UNE loops," HTC's language as proposed in § 42 could arrest Verizon's technology upgrades, require Verizon to build new facilities for HTC and require Verizon to combine network elements for HTC, all in contravention of Verizon's lawful obligations. Clayton and Rousey Testimony at 6-7 (citing Spainhour Testimony at 17).

Ms. Clayton and Ms. Rousey likewise provide extensive testimony responding to HTC's assertions that Verizon has delayed in providing collocation to HTC and has attempted to charge HTC tariffed rates for that service (rather than the rates in the current interconnection agreement). Id. at 7-10. HTC misstates the facts, and Verizon incorporates the aforementioned testimony by reference. Several of HTC's particular proposed changes merit special attention by the Commission.

As referenced by Ms. Clayton and Mr. Rousey, by deleting Verizon's § 42, HTC apparently seeks to gain the ability to interfere with Verizon's technology upgrades. Section 42 of the General Terms and Conditions properly preserves Verizon's right to upgrade its technology as necessary to maintain its network, continue to improve its service, and meet customer demand. Verizon is obligated to permit HTC to interconnect with its network, but it is not required to consult with HTC or other competitors before it makes changes to that network. HTC has no legal right to impede changes to Verizon's network, and it does not cite support for any such right. Indeed, technology upgrades should be encouraged by the Commission, rather than constrained, as they typically will benefit all carriers utilizing Verizon's network.

HTC's proposed language in § 42 appears to have less to do with Verizon's technological upgrades than it does with HTC's general access to Verizon's network elements. As such, this new language would not properly belong in § 42 (but rather in the Network Elements Attachment), even if it were warranted, which it is not. These sections would require Verizon to build new facilities for HTC and to combine network elements for HTC – both in contradiction to law. Verizon's language instead provides what the law actually requires. As Ms. Clayton and Mr. Rousey testified:

> Verizon makes UNEs available to HTC and other CLECs in a nondiscriminatory manner pursuant to the Network Elements Attachment of the draft Agreement. Verizon satisfies this obligation by using nondiscriminatory processes that are comparable to the processes used in Verizon's retail operations. Verizon also provides, per Section 251(c)(3) of the Act, "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point under rates, terms and conditions that are just, reasonable and non-discriminatory." Clayton and Rousey Testimony at 6.

Furthermore, although HTC's witness testimony disavows any intent to interfere with Verizon's technology upgrades, HTC's proposed changes to Verizon's proposed language would have precisely that result. Ms. Clayton and Mr. Rousey noted:

> Although Mr. Spainhour states that it has no desire to "'interfere with Verizon's technology upgrades,'" HTC proposes to eliminate all of Verizon's proposed § 42, which would effectively do just that. This language preserves Verizon's right to upgrade its technology as Verizon finds necessary to maintain its network, continue to improve its service and meet customer demand. Verizon is obligated to permit HTC to connect with its network, but it is not required to consult with HTC or other competitors before it makes changes to that network. Verizon, however, will attempt to protect copper facilities to the extent possible, where it is known that HTC is provisioning copper-based technologies, such as DSL, to its end users. HTC has no legal right to impose changes to Verizon's network and offers no legal justification for such a right. Indeed, technology upgrades should be encouraged, rather than constrained, as they typically will benefit all carriers utilizing Verizon's network. HTC simply proposes to remove all of Verizon's language addressing Verizon's right to upgrade its network and, instead, inserts a displaced provision more appropriately addressed in the Network Elements Attachment, if at all, that generally describes HTC's purported access to UNEs. Clayton and Rousey Testimony at 18-19 (citing Spainhour Testimony at 19).

Ms. Clayton and Mr. Rousey also discussed that HTC's proposed changes to §§ 42.1 and 42.2 could require Verizon to combine network elements for HTC or provide HTC with a higher quality of service than Verizon provides to itself and its own customers – something the law plainly does not require:

> HTC's proposed Section 42.1 requires Verizon to provide all Unbundled Network Elements (UNEs) to "enable HTC to provide a finished local exchange service."

> HTC's proposed § 42.2 states, "Verizon shall be obligated to provide all UNEs, and Combination of UNEs, to the extent that services and facilities would otherwise be available to Verizon's customers. Availability of services and facilities shall be deemed to exist if, in the absence of a request for UNEs from HTC, Verizon would provide the equivalent services and/or facilities in response to a direct request from its own end user."
>
> Requiring Verizon to provide such elements in a manner that would enable HTC to provide in each case a finished local exchange service could require Verizon to either build additional network elements or combine existing network elements in a manner other than that in which they are currently combined, in contradiction to current law.
>
> HTC makes several representations that Verizon had previously agreed to build on "an extraordinary basis UNE loops" for HTC's use without cost to HTC. Not only would Verizon not offer this arrangement to HTC due to the lack of a contract containing specific terms and conditions, it is inconsistent with the manner in which Verizon provides service in every other jurisdiction. Providing this type of agreement to HTC but to no other CLEC would be discriminatory to all other CLECs. It would also be inconsistent with the position that Verizon has always taken--a position recognized repeatedly by state commissions and the Eighth Circuit Court of Appeals--that it is not required to provide access to anything more than its existing network facilities and that it is not required to combine UNEs for CLECs. The fact that such language is not explicit in the Parties' current agreement makes Mr. Spainhour's representation even more suspect. Id. at 19-20 (citing Spainhour Testimony at 17-20; Watkins Testimony at 21; and 47 C.F.R. Section 51.319(b)).

As the Commission is well aware and as the Eighth Circuit has made clear: "subsection 251(c)(3) [of the Act] implicitly requires unbundled access only to an incumbent LEC's existing network – not a yet unbuilt superior one." Iowa Utils. Bd., Tab 1 at 813. Accordingly, if Verizon has facilities in place to provide a customer with service, those facilities will be made available to HTC if it wins that customer. In addition, if Verizon has facilities available that would permit HTC to provide service to potential customers that are not currently Verizon's, then those facilities will be made available to HTC as well. However, the Commission cannot require Verizon to provide facilities that do not exist.

Verizon also disputes other portions of HTC's proposed language for §§ 42.3 and 42.5 because it is overly broad, vague and misstates the law. Section 3.18 of the Network Elements Attachment, upon which HTC did not comment, prescribes how HTC will access Verizon's Loops terminating at Verizon's wire centers and how HTC will access loops provisioned via integrated digital loop carrier or remote switching technology deployed as a loop concentrator. Verizon's proposal is more detailed and accurately reflects its obligations under applicable law.

Verizon notes that HTC's witness testimony also alleges that Verizon has historically failed to provide loop transmission characteristics to HTC which are equal to those provided to GTE end users. HTC is mistaken. Ms. Clayton and Mr. Rousey provided the Commission with extensive testimony on this point:

> Mr. Spainhour's specific complaint is that modem speeds that customers had with Verizon have been significantly diminished when they convert their service to HTC via the Verizon-leased loop. While Verizon does not deny that this may occur in some instances, Mr. Spainhour again is overstating Verizon's obligations under the current interconnection agreement. Under that agreement, Verizon is obligated to provide only ***voice grade service*** on customer lines which have converted to HTC, just as is Verizon's obligation with respect to its retail customers. Article VII, Section 4.5 of the current interconnection agreement provides:
>
> > 4.5 Digital Loop Carrier. Where GTE utilizes integrated digital loop carrier ("IDLC") technology to provision the Loop element, GTE will take the necessary affirmative steps to provide unbundled Loops. The basic Loop provided will support voice grade services. Loop capabilities beyond voice grade (i.e., ISDN,) will be provided under the terms and conditions, and at the prices indicated in Section 4.3.
>
> There is no guarantee, however, that a particular ***dial-up modem speed*** can be attained on individual customer lines -- whether those lines belong to either a current Verizon customer or a former one.
>
> Dial-up modem speed is affected by the number of analog/digital conversions that occur on a particular line. In the best case scenario, there is a minimum of two analog/digital conversions on a customer line served in what Verizon calls a "host/remote configuration." Increasing the number of analog/digital conversions beyond two will decrease the dial-up modem speed available on a particular customer line. Cable length, loaded cable plant, and/or the use of digital subscriber line carrier also will decrease available modem speed.
>
> Years before the advent of local competition, Verizon (then GTE) made a series of network efficiency enhancements, including deployment of a number of host/remote configurations. Service between host offices and remote offices in these arrangements is provided through a direct digital interface integrated digital loop carrier working on fiber optic cable, with copper going only from the remote configuration to the customer premises.
>
> When customers served out of Verizon remote offices are converted to HTC service, these customer lines must be served via channel banks, creating another analog to digital conversion and thus decreasing the achievable modem speed on that customer line. While this may not be an optimal situation for HTC, Verizon is not required to modify its network (at great expense), to accommodate HTC; it is only required to provide access to its existing network. Moreover, HTC can assure modem speed by duplicating Verizon's network configuration, and thus

> eliminating the additional analog to digital conversion required by Verizon's current configuration. Direct Testimony of Clayton and Rousey at 24-25 (citing Spainhour Testimony at 21:4-22; 22:1-6).

HTC's proposed § 42.4, however, would effectively make Verizon the guarantor of transmission characteristics. Verizon has no such obligation under applicable law. As discussed above, Verizon must only provide HTC with existing available facilities for interconnection, including unbundled loops, regardless of the transmission quality of these loops. Moreover, Verizon's experience has shown that when CLECs have difficulty providing data services over the same voice grade lines that Verizon provides data services, it is often because of the CLEC's own equipment or practices. Transmission quality concerns are the CLEC's responsibility. As Ms. Clayton and Mr. Rousey advised the Commission:

> While some CLECs may have experienced difficulty providing data over a voice-grade line (line splitting or line sharing), the problem was not due to Verizon's facilities. Verizon provisions unbundled loops, including those that are capable of supporting data, in accordance with technical requirements that have been developed and approved through National Standards. The ability to send data over voice - grade lines is often a function of the data transmission equipment the provider uses at the collocation end or at the end user's premises. Our understanding is that CLECs that experience difficulty often do so because of problems with their own equipment or their own configuration of that equipment. Verizon has, at times, experienced similar problems with its own equipment, which is to be expected with new technologies. Clayton and Rousey Testimony at 26.

When asked if there is any way that Verizon can ensure that HTC experiences no difficulty providing data over voice grade lines, Ms. Clayton and Mr. Rousey responded:

> No. HTC proposes "penalties" that would "hold Verizon to the same quality of service ***or higher*** than that which Verizon provides to itself or its affiliates." But Verizon has no legal obligation to guarantee higher quality service than it provides to its own customers. Transmission quality is the CLEC's responsibility. Verizon is required to provide unbundled loops capable of transporting high speed digital signals. Not only does Verizon comply with this order, it also provides requesting CLECs with sufficient detailed information about the loop so that the CLEC can make an independent decision about whether the loop is capable of supporting the data equipment it intends to install. As a result, CLECs should access the information provided to determine themselves the suitability of loops for various digital technologies. While Verizon will agree to work with HTC to isolate the source of any trouble, it is HTC's responsibility to fix it. We are aware of no instance in which an ILEC has been required, under financial penalty, to provide higher quality service to CLECs than it does to its own customers. Id. at 26-27 (citing Spainhour Testimony at 20 (emphasis added); Section 42.4 of HTC's proposed contract; and Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order CC Docket

98-147, FCC 99-355 (1999)).

HTC's proposed changes to Verizon's proposed language in these areas is unreasonable and should be rejected by the Commission.

The Commission should also reject HTC's proposed § 42.6, insofar as it affords HTC the opportunity to hold Verizon hostage with respect to Verizon's own network build-out. HTC's proposed that, "Under no circumstances will copper cable loop transport technology be installed by Verizon until all conflicts have been resolved." HTC also seeks a one year advance notice of the planned deployment. This proposal is entirely unreasonable. HTC has no right to impede Verizon's installation of copper cable loop transport technology, and provides no legal support for this asserted right.

As Verizon noted in its Response to HTC's Petition, HTC never negotiated many of the points it now raises in this matter. As such, the Commission is obliged to order HTC to properly negotiate before bringing this issue before the Commission. If, however, the Commission is inclined to rule on the substance of this issue, then it should adopt Verizon's language. Unlike HTC's proposals, Verizon's language in § 42 of the General Terms and Conditions, as well as its proposed language in § 1.1, 1.2 and 3.18 of the Network Element Attachment are consistent with applicable law.

Verizon also notes that HTC's witness testimony has singled out General Terms and Conditions § 1.2 for Commission scrutiny, asserting that Verizon's refusal to provision improper combinations to HTC amounts to an "arbitrary condition[] regarding the availability of UNEs." Verizon strongly disagrees. As Ms. Clayton and Mr. Rousey explain:

> Section 1.2 of the Network Elements Attachment does not attempt to restrict HTC's communications with its customers, as Mr. Spainhour suggests; it only prevents the violation of the Eighth Circuit's rulings on combination offerings. Verizon proposes an "anti-gaming" language in Section 1.2 to prohibit HTC from inducing a soon-to-be HTC customer to ask Verizon to provide it with services that Verizon would otherwise not be required to provide to HTC if it were the requesting party, and, once those services have been provided, have the customer switch to HTC. In other words, this language precludes HTC from inducing a Verizon customer to order services from Verizon just so the customer can immediately sign up with HTC, thereby giving HTC access to a new combination that HTC could not otherwise obtain. Verizon does not intend to prohibit in any way customer migration to HTC, and the proposed anti-gaming contractual provision would not apply when a customer simply chooses to order services that require construction of facilities, and later decides to change carriers.
>
> This is particularly problematic in the context of, for example, special access. The typical scenario with retail service in South Carolina is that Verizon has no minimum use periods or termination liabilities and would be left without any way of making itself whole for the expenses of such construction and/or combination.
>
> HTC complains that Verizon's proposed § 1.2 of the Network Elements Attachment would prevent HTC from requiring Verizon to do indirectly that which the law does not require Verizon to do directly: provide a UNE or

> combination to a Verizon customer so that that customer can then switch service to HTC and have those facilities available to them. Certainly if Verizon is not required to build such facilities or combine such UNEs when HTC requests, HTC should not be permitted to entice Verizon's customers into making such requests simply to convert service to HTC. Clayton and Rousey Testimony at 22-23 (citing Spainhour Testimony at 19).

For all of these reasons, the Commission should order the parties to adopt Verizon's proposed language, without the changes suggested by HTC.

Discussion:

We first address Verizon's assertion that these issues are not ripe for adjudication because Verizon had not seen the specific language proposed by HTC prior to filing the Petition. We reject this argument. First, the Act does not contain any requirement that the Parties actually present language on – or even discuss – a particular issue prior to the filing of a Petition. See Section 252 of Act. Second, as pointed out by HTC, HTC's proposed Sections 42.1, 42.3, 42.4, 42.5, and 42.6 are slightly edited versions of sections taken from the Parties' existing agreement, and Section 42.2 was proposed after specific discussions between the Parties on this point during negotiations. See Watkins Direct Testimony at 18 (TR. at 66). Furthermore, Verizon is well aware that this issue has been one of primary concern to HTC under the existing agreement, as well as a central concern in the current negotiations, and the Parties have devoted extensive amounts of time to the discussion of these issues and concepts. Id. at 18-19 (TR. at 66-67); see also Petition, Attachment A (initial issues letter dated December 12, 2001).

We will proceed to discuss the issue on its merits. We find the testimony of Mr. Groome and Mr. Spainhour to be more credible with respect to what was agreed between the Parties regarding the existing interconnection agreement. They were the only two witnesses present who actually were involved in the final meeting at which that agreement was reached. TR. at 339.

We find that HTC has configured its network around Verizon's refusal to allow collocation at remote locations and Verizon's assurances that it would nonetheless take affirmative steps to ensure availability of unbundled loops to HTC without additional expense above and beyond the expense HTC would incur to access those loops if HTC were collocated in the remote offices. See Spainhour Direct Testimony at 18. (TR. at 23) We think it would hinder competition and violate the intent of the Act if we were to permit Verizon to change the rules now and require HTC to reconfigure its network.

In Section 42, Verizon proposes a provision that would allow Verizon to reconfigure its network to the detriment of the availability of UNEs to HTC. Verizon cannot be allowed arbitrarily or without consideration to reconfigure its network in a manner that would disrupt HTC's services or the availability of UNEs to HTC. To the extent that any reconfiguration of Verizon's network would affect CLECs' use of UNEs, the choice of where a carrier may collocate for access to UNEs, or the availability of facilities for UNEs, then it is incumbent on Verizon to make changes in a way that will not burden or disrupt its competitors' services and end user customers or cause economic burden on Verizon's competitors. This is in the best interest of the public, and consistent with the intent behind the Act.

Verizon's assertion that HTC is attempting to require Verizon to combine UNEs where it does not already do so is confusing. HTC's UNE interest is and has been with respect to unbundled loops as single elements. See Spainhour Rebuttal Testimony at 8 (TR. at 45). In any case, Verizon's reliance on the 8th Circuit Court of Appeals' order is misplaced in light of the United States Supreme Court's recent opinion upholding the FCC's TELRIC pricing rules. That discussion has been rendered moot. Verizon Communications, Inc. v. Federal Communications

Commission, 535 U.S. ___ (2002) (filed May 13, 2002).

In Section 1.2 of the Network Elements Attachment, Verizon attempts to apply vague provisions that would deny UNEs to HTC in the future for customers or services that are not currently in existence. See Spainhour Direct Testimony at 22 (TR. at 27). The terms of Section 1.2 would appear to deny UNEs in all cases unless a customer is already receiving service from Verizon and there are already facilities provisioned to that customer for those specific services. Under Verizon's interpretation, unless the exact service and customer exists today, an argument could be made that a UNE for any new customer, or a new service for an existing customer, would never be available. Id.

In addition, HTC cannot be penalized for truthful communications to customers. If a customer asks HTC for service and Verizon denies service to HTC, HTC must not be penalized for truthfully telling the customer that HTC is not able to serve the customer at that time but may do so in the future. The arbitrary provisions proposed by Verizon that would deny HTC access to future UNEs for that customer would harm not only HTC but also the customer by denying the customer its choice of provider. Verizon's proposal is not justified by any cost to Verizon, because the customer in this case would pay to Verizon all non-recurring and recurring charges associated with initiating service. Watkins Rebuttal Testimony at 14 (TR. at 108). Verizon would be compensated again for the UNE according to the terms of the agreement. Id. Verizon will be more than fully compensated. The only possible reason for Verizon's proposed provision is to place obstacles in the way of customers changing service providers. The provisions of Section 1.2 should be deleted.

The provisions of Verizon's proposed Section 3.18 likewise should not apply. HTC has explained to Verizon that some end users that previously obtained service from Verizon were capable of certain data speeds over their service facilities. When these end users are converted to HTC service using UNE loops, the data speed capability decreases significantly. Spainhour Direct Testimony at 21 (TR. at 26). Transmission speeds should not change when an existing customer is converted from Verizon to a UNE loop with HTC. Verizon must provide loop transmission capabilities for UNE loops to HTC that are equal to those that Verizon provides to its own customers. 47 C.F.R. §§ 51.305(a)(3); 51.311(a)-(b). Contrary to Verizon's assertions (see Clayton/Rousey Direct Testimony at 24-25 (TR. at 142-43)), the FCC's rules require Verizon to provide the same quality of service that they actually provide to their own customers, not some minimum level of service (i.e., voice grade) that they may have agreed to provide to competitors. Our finding here is consistent with the intent of the Act. Meaningful competition cannot exist if customers are repeatedly subjected to inferior service when they switch providers, particularly when the inferior service is the result of network deployment decisions made by the incumbent and outside the control of the CLEC.

We adopt HTC's proposal to delete Section 42 of the General Terms, Section 1.2 of the Network Elements Attachment, and Section 3.18 of the Network Elements Attachment in their entirety and add the following provisions to the General Terms:

42. Availability of Unbundled Network Elements.

Notwithstanding any other provision in this Agreement to the contrary, the provisions of this Section 42.0 shall apply with respect to Verizon's provision of Unbundled Network Elements.

42.1 Nothing in this Agreement shall prevent HTC from gaining access to all of the necessary Unbundled Network Elements described in the Network Elements Attachment.

42.2 Verizon shall be obligated to provide all UNEs, and Combination of UNEs, as required by controlling law, to the extent that services and/or facilities are otherwise provided to Verizon's customers.

42.3 With regard to unbundled loops, and where Verizon utilizes Digital Loop Carrier or Remote Switching technology deployed as a Loop concentrator to provision loops to end users in its own network, Verizon will take the necessary affirmative steps to make facilities available, including physical loop facilities, at no additional charge to HTC, for the provision of unbundled loops to HTC at the serving Wire Center.

42.4 With regard to unbundled loops, Verizon will provide to HTC UNE loops with transmission characteristics, including data speed capabilities, which are equal to that provided by Verizon to its own end users.

42.5 Verizon will provide to HTC accurate and up-to-date information regarding loop lengths and transmission characteristics upon request and at no charge to HTC.

42.6 If Verizon plans to deploy copper cable loop transport technologies within a cable sheath in which such technology was not previously deployed, Verizon will provide notice to HTC of such planned deployment, indicating all service enhancing copper cable technologies that would cause interference with the technology to be deployed, or that would be interfered with by the deployment of such technology. Such notice will be provided at least one calendar year in advance of the planned deployment. If HTC has deployed any technologies within the same cable sheath that would interfere with, or be interfered with, by the technology Verizon plans to deploy, the Parties will work together to resolve the manner in which any conflict in facilities will be resolved. Under no circumstances will copper cable loop transport technology be installed by Verizon until all conflicts have been resolved.

HTC and Verizon shall also incorporate language in the interconnection agreement which states the following: Verizon does not have to reconfigure its network to provide unbundled network elements to HTC.

ISSUE 17. INTERCONNECTION TRUNKS. What are the proper terms for the establishment of an Interconnection Point ("IP") and interconnection trunks between the Parties' networks?

HTC's Position:

HTC's position is that the arrangement between the Parties is mutual, and that both Parties will require transport and termination of the traffic on the network of the other Party. Petition at 32. HTC seeks some recognition of this mutuality in the agreement. Also, where 2-way trunks are necessary for the mutual exchange of traffic between the Parties, it is the responsibility of both Parties to establish how many trunks the Parties will need. Id.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Interconnection

Attachment, §§ 2.1 and 2.4, without the changes suggested by HTC.

The precise issue HTC attempts to address here is unclear. HTC's Petition generally references concepts of mutuality with regard to interconnection trunking, call transport, and termination and then states that there are "many provisions throughout the Interconnection Attachment which deviate improperly from this perfectly mutual arrangement." Verizon does not dispute that concepts of mutuality are integral to certain trunking arrangements, but it remains unclear which contract sections are now in dispute. Although HTC cites §§ 2.2 and 2.4 of the Interconnection Attachment as containing "logically flawed" sections, the only subsection of either 2.2 or 2.4 that remain in dispute is Section 2.4.2. Every other subsection of Section 2 is marked in plain text as language agreed upon by the Parties.

Particularly troubling are HTC's comments indicating that there is a dispute with regard to which party is responsible for ordering two-way trunks. Section 2.4.1, which is not disputed, states:

> 2.4.1 Where the Parties have agreed to use Two-Way Interconnection Trunks for the exchange of traffic between Verizon and HTC, ***HTC shall order*** from Verizon, and Verizon shall provide, the two-Way Interconnection Trunks and the Entrance Facility, on which such Trunks will ride, and transport and multiplexing, in accordance with the rates, terms and conditions set forth in this Agreement and Verizon's applicable Tariffs.

The arrangement described in subsection 2.4.1 whereby the CLEC orders the trunks is absolutely logical. A CLEC is responsible for implementing its own business plan. Verizon cannot predict when and where a CLEC will desire to interconnect with Verizon's network. Verizon is willing to interconnect using either one-way or two-way interconnection trunks between the Verizon and CLEC networks, but in either case the CLEC must notify Verizon as to timing and points between which it desires to establish interconnection trunks. If the CLEC orders a one-way trunk to deliver traffic to Verizon's network, Verizon will either build or order a one-way trunk back to the CLEC network. If two-way trunks are to be used, it is still appropriate for the CLEC to order that trunk because it is the CLEC that is interconnecting with Verizon.

Subsection 2.4.2, the only subsection of § 2 that is clearly in dispute, appears to address the very mutuality concerns HTC raises. Verizon proposed language in that section states:

> 2.4.2 Prior to ordering any Two-Way Interconnection Trunks from Verizon, HTC shall meet with Verizon to conduct a joint planning meeting ("Joint Planning Meeting"). At that Joint Planning Meeting, each Party shall provide to the other originating Centium Call Second (Hundred Call Second) information, and the Parties shall mutually agree on the appropriate initial number of Two-Way End Office and Tandem Interconnection Trunks and the interface specifications at the Point of Interconnection (POI). Where the Parties have agreed to convert existing One-Way Interconnection Trunks to Two-Way Interconnection Trunks, at the Joint Planning Meeting, the Parties shall also mutually agree on the conversion process and project intervals for conversion of such One-Way Interconnection Trunks to Two-Way Interconnection Trunks.

In short, subsection 2.4.2 establishes the process by which the Parties will cooperate to establish two-way trunk groups. This language, routinely used in Verizon's interconnection contracts, reflects standard industry procedure with regard to trunk group establishment. HTC has offered the Commission no explanation as to why this language is unacceptable.

Finally, at the end of HTC's description of its position on Issue 17, HTC proposes a new subsection 2.1: Petition at 32.

> 2.1 Notwithstanding any provision in this Section 2.0 to the contrary, the Parties agree that the establishment of trunks between their respective networks is for the mutual benefit of both Parties in addressing each Party's need to deliver telecommunications traffic to the other Party's network and each Party's need to have the other Party transport and terminate such telecommunications traffic on the other Party's network.

As noted above, the existing subsection 2.1 is not in dispute. If the Commission concludes that HTC desires only to add this section without replacing any existing sections, HTC's language is unnecessary, redundant, and confusing for several reasons.

First, the section does not appear to obligate either party to do anything. It is merely an expression of a fundamental principle and as such does not belong in contract intended to delineate specific obligations. ***Second***, § 1 of the Interconnection Attachment already states: (emphasis added)

> Each Party ("Providing Party") shall provide to the other Party, in accordance with this Agreement, the Providing Party's applicable Tariffs, ***and Applicable Law***, interconnection with the Providing Party's network for the transmission and routing of Telephone Exchange Service and Exchange Access.

Thus, to the extent Applicable Law obligates either party to follow general principles of mutuality, those concepts are already incorporated into the new interconnection agreement. ***Finally***, the first line of HTC's subsection 2.1 state "Notwithstanding any provision in this § 2.0 to the contrary." This language is confusing in that it implies that there may, in fact, be language in § 2.0 to the contrary and that HTC does not agree with that language. The Commission should recognize that HTC has not made any of these points to Verizon in their negotiations.

As the Commission is aware, Verizon witness Peter J. D'Amico addressed some of these concerns in his pre-filed testimony. He concluded that HTC's position on ordering interconnection trunks, as provided in HTC's new § 2.1, is unworkable and stated as follows:

> HTC's new section 2.1 of the draft interconnection agreement and Mr. Watkins' Direct Testimony indicate that Verizon should have an obligation to order two-way trunks. However, Verizon's proposed arrangement that requires HTC to order two-way trunks is absolutely logical. Verizon is not in a position to predict or guess when and where HTC will make such a request. As Verizon has stated before, it is willing to interconnect using either one-way, or two-way trunks, but because HTC is responsible for implementing its own business plan, it is reasonable to require HTC to order such trunks because HTC is interconnecting with Verizon. In sum, it is more efficient for HTC to drive the ordering process because HTC is in the best position to know what it needs in order to interconnect

> with Verizon's network. D'Amico Testimony at 5-6 (citing Watkins Testimony at 31:5-7).

When asked about any other problems with HTC's suggested language in § 2.1, Mr. D'Amico advised the Commission:

> HTC's proposed section 2.1 does not appear to require either party to do anything – it is just a statement that the Parties agree that trunks between their respective networks are for their mutual benefit in addressing their need to exchange traffic between those networks. This language is confusing and unnecessary, as well as inconsistent with the principle that the party requesting interconnection is in the best position to order the two-way trunks. Id. at 6.

For the foregoing reasons, the Commission should order the Parties to include Verizon's proposed § 2.4.2 and exclude HTC's § 2.1 from the final agreement.

Discussion:

We adopt Verizon's proposed Interconnection Attachment, Sections 2.1 and 2.4, without the changes suggested by HTC. Verizon's language recognizes that the Parties will meet to conduct a joint planning meeting prior to HTC ordering any Two-Way Interconnections Trunks from Verizon. Further, Verizon's language indicates that the Parties will mutually agree on the appropriate initial number of Two-Way End Office and Tandem Interconnection Trunks and the interface specifications at the Point of Interconnection (POI). Furthermore, Verizon's proposed language also indicates that when the parties have agreed to convert existing One-Way Interconnection Trunks to Two-Way Interconnection Trunks, the Parties will mutually agree on the conversion process and project intervals for conversion of such One-Way Trunks to Two-Way Interconnection Trunks. See Appendix A to the Post-Hearing Brief of Verizon South, Inc. at 63. Verizon's language addresses HTC's concerns regarding mutuality and interconnection trunks.

ISSUE 18. TRANSPORT PAYMENTS. What should the appropriate terms be for payment for transport on each Party's respective trunking facilities?

HTC's Position:

HTC's position is that the provisions for payment for transport should be equitable and mutual. See Petition at 32-34. Verizon's language, which would require HTC to pay Verizon for transport on Verizon's side of the Interconnection Point ("IP") but would not require Verizon to pay HTC for transport on HTC's side of the IP, is simply not fair. Watkins Direct Testimony at 33 (TR. at 81).

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Interconnection Attachment §§ 2.4.16, 7.1, 7.1.1., and 7.1.1.1 , without the changes proposed by HTC.

As HTC's witness Steven Watkins apparently now concedes, HTC's Issue 18 raises many of the same issues recently decided by this Commission in Docket No. 2000-527-C ("BellSouth Arbitration"). Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252., Order on Arbitration, Docket No. 2000-527-C (S.C. PSC Jan. 30, 2001) ("BellSouth Order") at Tab 13. See Watkins Testimony at 31-32. In that case, the Commission addressed the issue of "whether AT&T or BellSouth is going to be financially responsible for certain facilities needed to carry local traffic from a BellSouth local calling area to a distant Point of Interconnection ("POI") established by AT&T." Id. at 18. The Commission found that holding the CLEC responsible to pay for facilities necessary to carry calls from distant local calling areas to a single POI was the only "fair and equitable result": Id. at 19.

> Our review of the FCC's orders does not suggest that a CLEC is free to transfer costs incurred by its interconnection choices onto the ILEC. In the *Local Competition Order* the FCC specifically stated that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit." Id. at 27-28 (quoting Local Competition Order ¶ 199).

The Commission should reach the same conclusion here, and should order the parties to adopt the language that Verizon has proposed for Interconnection Attachment §§ 7.1, 7.1.1., and 7.1.1.1 -- all of which are consistent with the Commission's ruling.

Mr. Watkins' testimony also demonstrates that HTC's central concern in Issue 18 is with Verizon's proposed Interconnection Attachment § 2.4.16, to which HTC has proposed several revisions. Section 2.4.16 addresses cost apportionment between the Parties where the Parties share two-way trunking facilities. A typical example would be where the Parties have established a two-way trunk between the Verizon IP and the HTC IP. In this scenario, Verizon is responsible for the costs of delivering its traffic to the HTC-IP and HTC is responsible for delivering its traffic to the Verizon-IP. Verizon's proposed § 2.4.16 apportions the costs of the two-way trunk facility between the parties based on a proportionate percentage of use ("PPU") factor that reflects the balance of traffic between the parties. For example, if 70% of the traffic flowed from Verizon to HTC, Verizon would bear 70% of the cost and HTC would bear only 30%. If traffic flows were reversed in equal proportion, HTC would bear 70% of the cost and

Verizon would bear 30%. In neither case is either party responsible for the facility costs of carrying traffic beyond the other's IP.

HTC nevertheless objects to this language apparently on the ground that Verizon should be responsible for costs on HTC's side of HTC's IP. HTC proposes that Verizon pay 50% of non-recurring charges for the portion of the facility on HTC's side of the HTC-IP. Petition at 33. HTC's side of HTC's IP however, is HTC's network. HTC is to recover the cost of terminating calls on its network through reciprocal compensation charges, not additional facility-based charges. HTC's position is contrary to the Agreement's definition of IP. The VZ-IP or the HTC-IP are the points beyond which the other party is ***not*** responsible for delivering traffic. Just as HTC is not responsible for the cost of facilities on Verizon's side of the VZ-IP, Verizon should not be responsible for the cost of facilities on HTC's side of HTC's IP. Where a two-way trunk group runs between the respective IPs, the Parties are to share the costs of that facility in accordance with the PPU factor.

Although Mr. Watkins asserts that HTC understands these important points, HTC's unexplained changes to the first several paragraphs of Verizon's § 2.4.16 belie that claim. Mr. D'Amico addressed these changes by HTC in his testimony, and explained why Verizon's language should be adopted by the Commission:

> For transport charges under § 2.4.16, Verizon proposes that the parties calculate a proportionate percentage of use billing factor, or PPU. The PPU is calculated using the total number of minutes each party sends over a facility on which each two-way interconnection trunk rides. The PPU is used in Verizon's billing system to bill the appropriate portion of the recurring charges for the facility that Verizon provides between the HTC and Verizon Interconnection Points ("IPs"). Based on the PPU, Verizon will bill and HTC should pay Verizon a monthly recurring charge equal to the percentage of use for that facility.
>
> ***This arrangement is reasonable because HTC is the party placing an order for these facilities with Verizon. It makes no sense for Verizon "to provide equivalent payment to HTC for transport on HTC's side of the IP," as HTC suggests. (Arbitration Petition at 33.)*** Verizon does not charge HTC for any portion of the facility beyond the [IP]. For example, assume HTC issues an access service request (ASR) to Verizon to install a two-way trunk between the parties. Further assume that Verizon incurs $1000 in monthly recurring charges to maintain the facility between the Verizon and HTC [IP], and that 5% of the traffic over this trunk, or the PPU, is originated by HTC to Verizon. Thus, Verizon would charge HTC $50 in monthly recurring charges because the PPU indicates that HTC is only using 5% of the two-way interconnection trunk facility it has ordered from Verizon. Finally, Verizon proposes to use a PPU of only 50%, until the parties can calculate PPU based on actual traffic data. ***The PPU only applies to the facility between the HTC and Verizon [IP]. It does not have an impact on the facilities that are used to carry the traffic from the respective Party's IP to the called customer of that Party, so HTC's proposal makes no sense.*** D'Amico Testimony at 6-7 (emphasis added).

When asked to provide further explanation in this regard, Mr. D'Amico addressed the question of non-recurring charges -- the charges reflected in HTC's changes to the second paragraph of Verizon's proposed § 2.4.16. Mr. D'Amico stated:

> For two-way trunks HTC orders from Verizon, Verizon proposes that HTC should pay half of Verizon's non-recurring charges for the portion of the facilities that those trunks ride on the Verizon side of the [IP]. ***Because HTC orders the two-way trunk from Verizon and Verizon must then install this trunk, Verizon as the supplier of this service incurs non-recurring costs for the work it performs, and is entitled to recovery of these costs.*** Verizon only charges HTC half of its non-recurring costs, however, because Verizon uses the two-way trunk with HTC. This practice properly ensures that Verizon is compensated for the work that Verizon does on behalf of HTC, but recognizes Verizon's use of the facility.

Accordingly, HTC's changes to the second paragraph of Verizon's proposed § 2.4.16 do not make sense. Since HTC is not installing trunks for Verizon, Verizon should not have to "pay fifty [sic] percent (50%) of the HTC non-recurring charges" as HTC's edits provide.

For all of these reasons, the Commission should order the parties to adopt Verizon's proposed language, without the changes suggested by HTC.

Discussion:

We adopt Verizon's proposed Interconnection Attachment Sections 2.4.16, 7.1, 7.1.1, and 7.1.1.1, without the changes proposed by HTC. We agree with Verizon that its language in Interconnection Attachment Sections 7.1, 7.1.1, and 7.1.1.1 are consistent with the Commission's ruling in Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252 in Docket No. 2000-527-C. We held, in Docket No. 2000-527-C, that "our review of the FCC's orders does not suggest that a CLEC is free to transfer the costs incurred by its interconnection choices onto the ILEC." Id. at 23. Moreover, we also held that the CLEC should be responsible for its portion of the traffic utilizing the facilities and that requiring the CLEC to pay for the costs of its interconnection choices to offset the costs imposed by those interconnection choices on the ILEC is the fair and equitable solution." Id. at 24. Finally, this Commission held that "while AT&T can have a single POI in a LATA if it chooses, AT&T shall remain responsible to pay for the facilities necessary to carry calls from distant local calling areas to that single POI. That is the fair and equitable result." Id. at 28. As we have previously ruled that a CLEC is responsible for paying for facilities necessary to carry calls from distant local calling areas to a single POI, the same conclusion should be drawn in this case and Verizon's language in Sections 7.1, 7.1.1 and 7.1.1.1 should be adopted.

Section 2.4.16 addresses cost apportionment between the Parties where the Parties share two-way trunking facilities. Regarding Section 2.4.16, HTC seeks to have Verizon pay a percentage of HTC's monthly recurring charges for the facility on which the Two-Way Interconnection Trunks ride equal to Verizon's percentage of use of HTC's facility as shown by the Proportionate Percentage of Use. We agree with Verizon's language in Section 2.4.16 which apportions the costs of the two-way trunk facility between the Parties based on a Proportionate Percentage of Use factor that reflects the balance of traffic between the Parties. As stated by Verizon, "in neither case is either party responsible for the facility costs of carrying traffic beyond the other's interconnection point." See Appendix A to Post-Hearing Brief of Verizon South, Inc. at 69. Moreover, we also agree with Verizon that neither Party should be responsible for the cost of facilities beyond either Party's interconnection point. The proportionate percentage of use factor would apply only in those situations where the Parties share trunk groups. Additionally, HTC should also be responsible for fifty percent (50%) of the non-recurring costs for two-way trunks that are installed by Verizon. It is only appropriate because HTC is the carrier seeking to interconnect and therefore is responsible for installation of the two-way trunks. We agree with Verizon's language which holds HTC responsible for 50% of

Verizon's non-recurring cost which recognizes that Verizon customers will be using the two-way trunks to terminate calls to HTC customers.

ISSUE 19. NEW IPs. What should the appropriate time period be for the establishment of IPs in another LATA?

HTC's Position:

HTC's position is that Section 4.3 of the Interconnection Attachment should reflect a specific amount of time for the establishment of Interconnection Trunks in another LATA following a request by HTC for such arrangements in another LATA. HTC proposes that sixty (60) days should be set forth explicitly in the Agreement. Petition at 35.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Interconnection Attachment § 4.3, especially in view of the problems inherent in HTC's position. First, HTC's stated Issue 19 ostensibly addresses "*IPs*," but its discussion of position addresses the establishment of new *Interconnection Trunks* in another LATA. Interconnection Trunks and "IPs" are two entirely different terms and thus HTC's proposal is both unclear and confusing. Second, HTC has failed to explain why an arbitrary deadline for establishment of Interconnection Trunks (HTC has proposed 60 days) is necessary or how, exactly, such a deadline would work.

As to this second point, the process of interconnecting in locations where the Parties are not already interconnected involves a large number of factors, many beyond Verizon's control. Depending on the method of interconnection HTC decides to use, HTC may have to obtain rights of way, purchase or construct facilities, arrange for collocation space, create traffic forecasts, and complete a number of other tasks. An arbitrary deadline imposed by order of the Commission makes no sense for either party when there are so many variables that differ from case to case, and those variables will affect timing. As Mr. D'Amico testified:

> For example, HTC may have to obtain rights-of-way, construct new facilities, obtain SS7 certification, deploy its switch, apply for NXX codes from the number administrator, and/or arrange for collocation space. Verizon cannot control the timing of these activities. As such, imposing any arbitrary deadline – 60 or otherwise – is not a workable solution. As Verizon's proposed language states in section 4.3, the interconnection activation date in the new LATA shall be mutually agreed to by the Parties after they discuss all the relevant variables. D'Amico Testimony at 9.

Verizon's proposed language strikes a reasonable balance between the needs of each party. Section 4.1 obligates HTC to provide Verizon written notice when it desires to initiate the interconnection process. Section 4.2 requires the notice to include initial routing points; the HTC points of financial responsibility (HTC-IPs); the intended activation date; a forecast of

HTC's trunking requirements; and other information Verizon may reasonably request to facilitate the interconnection. Section 4.3 obligates Verizon to respond to the request and the Parties to agree upon an interconnection activation date within 10 business days. Taken together, §§ 4.1 and 4.2 require HTC to have developed its interconnection plan to enable Verizon to respond, as required by § 4.3, and begin the provisioning process upon receipt of HTC's orders. After this point, the Parties will work together to complete the process. If HTC has planned properly and has in place the necessary resources, the Parties should be able to complete the interconnection well within 60 days. Verizon's current targets for special access provisioning, for example, are as short as 5 days depending on the type of facility ordered. Satisfaction of those targets, however, is largely contingent upon HTC having met requirements previously mentioned and referred to in §§ 4.1 and 4.2.

The Commission accordingly should reject HTC's arbitrary 60-day requirement and order instead the adoption of Verizon's industry standard language.

Discussion:

We agree that there should be some time frame for establishing future interconnection as needed, and believe that sixty (60) days is a reasonable time frame. To the extent there are intervening factors that require an extension of this time frame, the Parties are free to mutually agree to such an extension. If the Parties cannot reach an agreement regarding the length of an extension, the Parties can solicit the services of the Commission Staff to mediate the issue of an appropriate extension of time.

ISSUE 20. THIRD PARTY DELIVERED TRAFFIC. What mutual arrangements should apply for third party traffic that either Party may deliver to the other Party for transport and termination pursuant to the Agreement?

HTC's Position:

HTC's position is that each Party should be responsible for payment to the other Party for the termination of third party traffic delivered to that Party. Petition at 35.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Interconnection Attachment, § 8.3, without the changes suggested by HTC.

Section 8.3 of the Interconnection Attachment to the new interconnection agreement addresses the situation where HTC delivers traffic to Verizon that originates on a third-party network. As Mr. D'Amico described in his pre-filed testimony:

> Third-party delivered traffic is a transitional service that Verizon provides to all CLECs who interconnect with Verizon. Third-party-delivered traffic neither originates from nor terminates to a Verizon customer, but rather, originates from a third-party carrier's network, and terminates on another network. D'Amico Testimony at 10.

Section 8.3 is designed to prohibit CLECs from engaging in regulatory arbitrage by disguising access traffic or other types of non-local traffic as local traffic. Verizon has included Section 8.3 in its template language as a direct result of its previous experience with CLECs who have done just that. That section requires HTC to pay Verizon the same amount that a third-party carrier would have been obligated to pay Verizon had it delivered its traffic directly to Verizon. By obligating HTC to pay the same amount as the third party, Section 8.3 removes any incentive HTC might have to engage in arbitrage schemes rather than pursue legitimate competition.

HTC seeks to make the section reciprocal. Reciprocity in this instance, however, is not required by law and would not make any sense. The reciprocal scenario would be where Verizon, as a tandem operator, delivers third-party originated traffic to HTC's network for termination. Although Verizon is not required to transit third-party originated traffic, it will carry the traffic so long as it does not exceed a DS-1 level of capacity. By limiting the amount of traffic per carrier to the DS-1 level, Verizon limits third-party reliance on Verizon's tandems and the corresponding tandem exhaust problems that would likely otherwise result. If a third party wishes to terminate traffic above a DS-1 level, it must either interconnect directly with the terminating CLEC or make arrangements with another provider (i.e., a CLEC or an IXC). Mr. D'Amico's testimony addressed this exact point:

> Verizon's position is consistent with the Act, which requires each carrier to interconnect with the facilities of another requesting carrier. HTC is obliged, therefore, to negotiate arrangements for such interconnection with other carriers. Verizon's provision of transit service up to a DS-1 level of transit service per third-party carrier will accommodate HTC's negotiation of its own interconnection arrangements with such carriers. In the meantime, the DS-1 restriction is a reasonable benchmark necessary to limit congestion on Verizon's network. Limiting congestion at Verizon's tandems and preventing tandem exhaust benefit all users of the public switched telephone network. Without any limitation on third-party-delivered traffic, HTC will have no incentive to interconnect directly with the other carriers to collect and receive traffic from those carriers. At a DS-1 level, the traffic between the CLEC and the other carrier is sufficient to justify their construction of a direct interconnection trunk for their traffic. This limitation is also consistent with the requirement for direct end office trunking when the traffic HTC delivers to Verizon tandem's exceed the DS-1 level for any particular end office. Id. at 11.

Nor should Verizon have to pay HTC reciprocal compensation on such transit traffic. Mr. D'Amico addressed this misguided notion in his testimony as well, stating:

> Verizon is not obligated to provide transit traffic. Verizon's voluntary agreement to provide transit services up to the DS-1 level of traffic applies equally to all

> CLECs, Commercial Mobile Radio Service ("CMRS") providers, and Independent Telephone Companies ("ITCs"). Requiring Verizon to make arrangements directly with third parties for any compensation owed in connection with calls on HTC's behalf obviates any need for HTC to interconnect directly with other carriers; instead, it can rely on Verizon to do the billing. By requiring Verizon to pay HTC for traffic that originates from a third party, as HTC's proposal suggests, HTC also relieves itself of its obligation under the Act (in § 251(b)(5)) to establish reciprocal compensation arrangements with other CLECs. HTC's proposal is also inconsistent with the recent NY PSC *Local Traffic Order* at page 8, which acknowledged that "if a third-party ILEC (e.g., Verizon) transports a call between the originating and terminating carriers, it should have no responsibility to pay for its completion." Thus, the Commission should reject HTC's proposal and allow tandem transit services to be billed according to Verizon's proposed interconnection attachment. Id. at 11-12.

Moreover, in those instances where Verizon would transit third-party traffic to HTC, Verizon would provide electronic call detail records in accordance with the industry's Ordering and Billing Forum (OBF) Guidelines. These records allow HTC to verify the origin of the traffic and to bill and collect amounts due directly to the third-party carrier originating the traffic. Verizon is neither required, nor is it willing, to function as the middle-man for billing and collection purposes in these circumstances.

Verizon's proposed language should be approved by the Commission because it is necessary to eliminate the incentive and ability of HTC or other adopting CLECs to circumvent access charges by transiting third-party networks.

Discussion:

Verizon's proposed Section 8.3 of the Interconnection Attachment would make HTC responsible for payment to Verizon for the termination of third party traffic based on what amount such third party would be obligated to pay Verizon for termination of the third party traffic. Verizon has no more right or authority to deliver traffic to HTC without being responsible for that traffic than HTC has to deliver traffic to Verizon without responsibility. See Watkins Direct Testimony at 34 (TR. at 82). The terms and conditions must be reciprocal.

Furthermore, Verizon appears to argue that, while it transits third party traffic, any agreements it has with third parties to do so are limited in capacity. See D'Amico Direct Testimony at 10 (TR. at 234). Verizon's agreements with third parties are not relevant to HTC or to this proceeding. HTC is not a Party to those agreements. What is at issue here is how Verizon and HTC will treat third party delivered traffic as between the Parties. We agree with HTC that this provision should be mutual and adopt the following language for Section 8.3 of the Interconnection Attachment:

> For any traffic originating with a third party carrier and delivered by one Party to the other Party, the Party delivering such third party carrier traffic shall pay the other Party the same amount, if any, that the third party carrier would have been obligated to pay the terminating Party for termination of that traffic.

ISSUE 21. TRANSITION OF SERVICE. What charges should apply in the event that Verizon discontinues the availability of a UNE and HTC subsequently obtains the UNE according to other available terms?

HTC's Position:

HTC's position is that, subject to the other items above regarding changes in law and the availability of UNEs, to the extent that a UNE may be discontinued, HTC should not be subjected to repeat non-recurring charges. Petition at 35. Therefore, the (b) clause in Section 1.5 of the Network Elements Attachment should be deleted. In its place, the following language should be added:

> (b) there will be no non-recurring charges imposed on HTC for its election to purchase any services from Verizon on a non-UNE basis as a replacement for the discontinued UNE or Combination.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Network Elements Attachment § 1.5, without the changes suggested by HTC. Verizon and HTC closed this issue in negotiations. HTC is now apparently attempting to renege on its agreement and reopen the issue with new proposed language never submitted to Verizon. The Act does not permit such conduct during negotiations. For this reason, the Commission must reject HTC's proposals for § 1.5 of the Network Elements Attachment.

If the Commission is inclined to consider HTC's language anyway, then it should be rejected on its merits. HTC's proposals make no sense. HTC proposes to delete Verizon's § 1.5(b) of the Network Elements Attachment, which requires HTC to pay all applicable charges for services purchased in place of a UNE or combinations Verizon is no longer obligated to provide, including, but not limited to, installation charges. This provision secures Verizon's right to recover its costs of installing a new facility for HTC or provisioning HTC a new service that Verizon is not legally obligated to provide. Under HTC's proposal, Verizon would provide such non-mandatory services free of charge. This result is plainly unreasonable.

HTC's alternate proposed language also should be rejected because it would deny

Verizon recovery of its costs for provisioning services purchased in place of those that Verizon no longer is required to provide. HTC alleges that it should not be subject to "repeat non-recurring charges" when one service is discontinued and another initiated. HTC appears to misunderstand the nature of non-recurring charges. These charges are, by definition, non-repeating. Each non-recurring charge relates to provisioning a facility or service ordered by the CLEC. Verizon would not recover the same non-recurring charge twice under its proposal. It would, rather, recover only the costs of performing the activities associated with each facility or service HTC orders.

As the Commission will note, Mr. Watkins' testimony on behalf of HTC provides no substantive support for HTC's positions in this regard. As Ms. Wiklund testified:

> As he does with other issues, Mr. Watkins' testimony sets forth no substantive support for this disputed issue. Instead, he relates the history of the negotiations about this issue, even including as an exhibit an email between himself and a Verizon negotiator. Mr. Watkins states only that this remains unresolved. According to its Petition, HTC wants to insert a sentence that says Verizon will not assess HTC any non-recurring charges. Verizon will comply with applicable law when assessing any charges, but Verizon cannot now predict what the law will require with respect to those charges so HTC's proposal makes no sense. Accordingly because Verizon has clearly stated its position in its response to the petition, responding to Mr. Watkins' testimony any further is unnecessary. Wiklund Testimony at 13.

For all of these reasons, HTC's proposal must be rejected because it denies Verizon its right under the Act to recover the costs it incurs in providing facilities and services to CLECs.

Discussion:

After reviewing the record, we find that the transition of service issue was not closed during negotiations. We adopt Verizon's proposed Network Elements Attachment Section 1.5, without the changes suggested by HTC. Section 1.5 involves Verizon terminating its provision of a UNE or Combination to HTC pursuant to the Commission, the Federal Communications Commission, or a court or other governmental body directive which states that Verizon is not required by applicable law to provide such UNE or Combination. HTC opposes repeat non-recurring charges when a UNE is discontinued. However, Verizon will incur costs of installing a new facility for HTC or provisioning HTC a new service that Verizon is not legally obligated to provide. See Appendix A to Post-Hearing Brief of Verizon South, Inc. at 77. Verizon should be allowed to recover from CLECs costs which are related to conversion of a UNE to a service that a CLEC orders and Verizon provides (i.e., installation charges).

ISSUE 23. WORK ORDER CHARGES. Under what circumstances should a charge apply to either Party for work order activity that cannot be completed?

HTC's Position:

HTC's position is that the cost of missed appointments is or should be included in the nonrecurring charges. Spainhour Direct Testimony at 23 (TR. at 28). In any case, HTC asserts that not charging for missed appointments is consistent with Verizon's treatment of its own retail customers. Spainhour Rebuttal Testimony at 5 (TR. at 42). HTC proposes to strike Section 1.8 of the Network Elements Attachment, which would require HTC to incur additional charges in the event HTC's customer was not ready to receive the Verizon work.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Network Elements Attachment § 1.8, without the changes suggested by HTC.

Contrary to HTC's assertion, Verizon's proposed language in § 1.8 of the Network Elements Attachment is neither "vague" nor "unreasonable." Petition at 36. Verizon does not claim that it performs UNE activity for HTC based on directions provided by "HTC's Customers." Instead, § 1.8 provides that if Verizon cannot complete requested work activity as a result of "HTC Customer *actions*" (which could be anything from the customer not being home to the customer refusing Verizon access), then HTC will be assessed an appropriate charge to compensate Verizon for its cost of attempted performance. Logically, the only party that would request work activity on behalf of an HTC customer would be HTC itself. Thus, § 1.8 simply provides a method for Verizon to recover the costs incurred for dispatching a technician to service an HTC customer– *again, at HTC's request*. This provision is not a "penalty" because it compensates Verizon only for the expenses incurred in deploying the equipment and workers necessary to complete an HTC request.

In their testimony, Ms. Clayton and Mr. Rousey described what typically happens when Verizon receives a work order request from a CLEC:

> If HTC or any other CLEC requests Verizon to do certain work through a valid, electronic Service Request or through a trouble report, Verizon would schedule a time for a technician or appropriate personnel, if necessary, to go to HTC's customer's premises. Once dispatched, the technician attempts to perform the requested work. Clayton and Rousey Testimony at 27.

If work cannot be completed because the customer is not present or ready, Verizon incurs significant costs:

> If Verizon cannot complete requested work activity as a result of HTC's customer's actions (which could be anything from the end user not being home to

> the customer refusing Verizon access), Verizon will have incurred costs that should be recovered from HTC, the cost causer. There is no reason for Verizon and its customers to subsidize HTC's activities.
>
> As reflected in § 1.8 of its Network Elements Attachment, Verizon is entitled to recover an appropriate non-recurring charge to recover its costs of dispatching a technician to service an HTC customer at HTC's request. Id. at 28.

Ms. Clayton and Mr. Rousey also addressed the question of whether or not HTC disputes Verizon's right to recover these costs. They testified:

> Mr. Spainhour does not seem to object to Verizon's right to recover costs it incurs for missed appointments. HTC, however, seems to be under the impression that Verizon has already reflected these costs in its calculation of the non-recurring charges for the particular service the technician would have performed. This is not true and Verizon is entitled to recover costs incurred as a result of HTC customers missing appointments. Id.

In an effort to resolve this issue, Verizon is willing to change the first sentence of § 1.8 to read as follows: "If as the result of HTC Customer actions (i.e., Customer Not Ready ("CNR")), Verizon cannot complete work activity requested by HTC after a technician has been dispatched to the HTC Customer premises, HTC will be assessed a non-recurring charge associated with this visit." Verizon believes that this change will allay any concerns HTC may have with this provision.

For all of these reasons, the Commission should order the parties to adopt Verizon's proposed language or the alternative referenced immediately above.

Discussion:

We adopt Verizon's proposed Network Elements Attachment Section 1.8, without the changes suggested by HTC. When Verizon dispatches a technician to HTC customer premises, Verizon does incur some expense related to the dispatch even though the work activity was not completed. Verizon should be compensated for its attempted performance and Verizon should only be entitled to the expenses incurred in deploying the equipment and workers necessary to complete an HTC request.

ISSUE 24. BELL ATLANTIC AREAS. Should the availability of "2-Wire HDSL-Compatible Loop" be limited only to former Bell Atlantic service areas?

HTC's Position:

HTC seeks assurance that 2-Wire HDSL-Compatible Loops will be available in both Verizon's former Bell Atlantic areas and former GTE areas. Petition at 36. To this end, Mr. Spainhour stated at the hearing that HTC "if [the circuits] are the same, all we ask is that the word 'similar' be changed to 'same.'" TR. at 368.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Network Elements Attachment § 3.5 *in toto*, despite HTC's misguided refusal to accept the last two sentences of that provision.

Verizon is uncertain as to why HTC has made and continues to make § 3.5 of the Network Element Attachment an issue in this arbitration. Section 3.5 of the Network Elements Attachment is a unique UNE product description, which provides, in pertinent part:

> 2-wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities. The 2-wire HDSL-compatible loop is available only in former Bell Atlantic Service Areas.

This product description, like those contained in the undisputed §§ 3.1 through 3.4, and §§ 3.6 through 3.11, is designed to provide HTC will an standard xDSL product to facilitate HTC's ordering of the same. Verizon developed these product descriptions in response to general CLEC demand and thus, they tend to be the types of UNE loops that most CLECs want and order most frequently. By defining each of these loops, including the loop type described in § 3.5, Verizon has been able to assign a unique ordering code (e.g., NC/NCI code) associated with each loop in order to facilitate CLECs' more efficient ordering of these products; ensure maintenance issues are properly addressed; and ensure that the loop carrying data is protected against network upgrades to fiber.

HTC has focused on the last sentence of Verizon's proposed § 3.5, which states: "The 2-wire HDSL-compatible loop is available only in former Bell Atlantic Service Areas." This sentence is intended to establish that a unique NC/NCI ordering code has been established for the specific loop product set forth in § 3.5 only in the former Bell Atlantic Service Area, and that such NC/NCI code is not applicable in former GTE Service Areas. Such language is not intended to mean that HTC cannot order a UNE loop that is suitable for HDSL transmission in the former GTE Service Areas. In fact, to clarify this point, Verizon proposed to HTC to add the following language: "HTC may, however, pursuant to Section 3.14 below, order a 2W Digital Loop in the former GTE Service Areas that provides capability similar to such 2-wire HDSL compatible loop." Verizon already has explained this to HTC, and has provided HTC with the specific NC/NCI codes applicable to ordering the 2W Digital Loop (w/ capability similar to the 2-wire HDSL compatible loop) in former GTE Service Areas such as South Carolina. By using these unique codes, HTC communicates to Verizon that it intends to provide an HDSL-compatible service over the loop. Because Verizon's proposed clarifying language above resolves any confusion HTC may have had regarding Section 3.5, the Commission should resolve this issue by adopting Verizon's proposed language.

Verizon notes that HTC's witness has nevertheless complained that HTC has been unable to order 2-wire HDSL compatible loops under the current interconnection agreement. To explain Verizon's position, and to respond to HTC's concerns, Ms. Clayton and Mr. Rousey testified as follows:

> The product descriptions in Sections 3.1 through 3.11 of the Network Elements Attachment are designed to provide HTC with a standard xDSL product to facilitate HTC's ordering of the same. Verizon developed these product descriptions in response to general CLEC demand and, thus, they tend to be the types of UNE loops that most CLECs order most frequently. By defining each of these loops, including the loop type described in Section 3.5, Verizon has been able to assign a unique ordering code (*e.g.*, NC/NCI code) associated with each loop in order to facilitate CLECs' more efficient ordering of these products; ensure maintenance issues are properly addressed; and ensure that the loop carrying the data is protected against network upgrades to fiber. The last sentence of § 3.5 referencing the Bell Atlantic Service Areas establishes that a unique NC/NCI ordering code has been established for the specific loop product set forth in § 3.5 only in the former Bell Atlantic Service Area, and that such NC/NCI code is not applicable in former GTE Service Areas--not that HTC is unable to order a UNE loop suitable for HDSL transmission in the former GTE service areas. Product offerings in the former GTE area and in the former Bell Atlantic area are mostly consistent; however, naming convention differences exist and must be recognized.
>
> To clarify this for HTC, we understand that Verizon proposed to add the following language: "HTC may, however, pursuant to Section 3.14 below, order a 2W Digital Loop in the former GTE Service Areas that provide capability similar to such 2-wire HDSL compatible loop." We also understand that Verizon has provided HTC with the specific NC/NCI codes applicable to ordering the 2W Digital Loop (with capability similar to the 2-wire HDSL compatible loop) in former GTE Service Areas such as South Carolina. By using this code, HTC will obtain an HDSL-compatible service over the loop. Clayton and Rousey Testimony at 29-30.

For this reason, HTC's suggestion that the HDSL capable loops provisioned in the former Bell Atlantic Service Areas and the former GTE Service Areas are somehow governed by different contractual terms is incorrect. While different UNE loops might have different rates, all of the UNE loops described in the Network Elements Attachment are subject to the same terms and conditions. Specifically, any 2W Digital Loop order by HTC would still be governed by Section 3.14 *et seq.*, as would any and all xDSL loops provisioned under this new interconnection agreement. Verizon currently is attempting to align its product offerings and naming conventions post-merger, including the alignment of the 2W HDSL capable and 2W Digital loops. However, this endeavor has not yet been finalized, thus necessitating the language proposed by Verizon in this proceeding.

Even despite those efforts, however, HTC's witness complains that the 2-wire digital loop that Verizon makes available to HTC "fall[s] well short of what is required to provide HDSL services" in the former GTE areas. Spainhour Testimony at 23. Ms. Clayton and Mr. Rousey disputed this assertion, stating as follows:

> Verizon is obligated to provide an unbundled loop that is capable of supporting DSL service. Verizon, in accordance with its technical requirements documents, provides a 2-wire transmission facility that is capable of supporting HDSL technology. The facility, where available, will be under 12,000 feet and will be non-loaded (*i.e.*, without electronics). The CLEC must provide the physical equipment at both the collocation site and at the end user's premise, specifically a CLEC-provided modem, to complete the HDSL service and its capabilities to the end user. This facility is exactly the same product as they get in the former Bell Atlantic area, with which HTC seems to be satisfied. Clayton and Rousey Testimony at 30-31.

For all of these reasons, the Commission should order the parties to adopt Verizon's proposed language or the alternative it proposes here.

Discussion:

This issue appears to have been resolved during the course of the hearing. TR. at 368; TR. at 370-371. The language of the Agreement (Section 3.5 of the Network Elements Attachment) will reflect that HTC may order a 2-Wire Digital Loop in the former GTE Service Areas that provides capability the same as the 2-Wire HDSL-Compatible Loop that is available in the former Bell Atlantic Service Areas with the understanding that the Ordering Codes are different.

ISSUE 25. LOOP PRE-QUALIFICATION. What terms should apply for HTC's pre-qualification of loops?

HTC's Position:

HTC cites its past experience of numerous Verizon errors in loop pre-qualification and asks the Commission to address appropriate performance standards to govern Verizon's provision of loop qualification information and an appropriate resolution to HTC's orders that would avoid further delay when it is discovered that the pre-qualification information provided to HTC by Verizon is inaccurate. Spainhour Direct Testimony at 25-26. In addition, it is HTC's position that it should not be required to perform pre-qualification on every single loop ordered. See Spainhour Rebuttal Testimony at 5-6 (TR. at 42-43). Pre-qualification is not necessary in every case, and can cause unnecessary delay for routine orders. Id.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Network Elements Attachment §§ 3.14, 3.14.1, 3.14.2, 3.14.3, 3.14.4, 3.14.5, and 3.14.6, despite HTC's assertion that they are not necessary.

Although HTC characterizes Issue 25 as addressing the terms governing pre-qualification of loops, nothing in HTC's Petition or its proposed interconnection agreement actually deals with that subject. Instead, HTC attempts to use this issue to complain that Verizon's loop pre-qualification systems have caused delays in loop provisioning. HTC has offered no language to address these claimed problems. Instead, it invites the Commission to "address appropriate performance standards" in this area. There are several significant problems with HTC's approach. Verizon notes that Ms. Clayton and Mr. Rousey have submitted extensive testimony on Verizon's loop pre-qualification systems. See Clayton and Rousey testimony at 31-36.

First, HTC has not properly raised any loop pre-qualification issue because it has not proposed any language addressing its purported concerns or even explained the parties' respective positions on the issue. See 47 U.S.C. Section 252(b)(2) at Tab 3. HTC admits that: "The Parties have not yet had a chance to review this issue. HTC cannot determine what Verizon's position will be." See HTC Petition at 37.

Under Section 251(c)(3) of the Act, CLECs must "negotiate in good faith the terms and conditions of . . . [interconnection] agreements." As at least one other state public utilities commission has noted, "A petition for arbitration presupposes that the parties have engaged in good faith negotiations but were unable to resolve all the issues." See 47 U.S.C. Section 251(c)(1); In the Matter of the Petition by GCI Communications Corp., et al., Regulatory Commission of Alaska Docket No. U-99-141; Order No. 4 et al., 2000 Alas, PUC LEXIS 72 (April 17, 2000) at Tab 15. HTC never raised this issue in negotiations, as it must do before asking the Commission to address it in arbitration. Indeed, the Commission could not arbitrate the issue even if it wanted to, since HTC has failed to propose any language that might satisfy its asserted concerns. Without knowing exactly what HTC seeks, Verizon is denied the opportunity to fashion any meaningful response for consideration by the Commission.

Second, this is a Section 252 arbitration between two telecommunications carriers, not a generic proceeding intended to address "appropriate performance standards to govern Verizon's provision of loop qualification information." Id. Industry-wide issues, such as performance measures governing ILEC processes are properly addressed in generic proceedings in which all interested parties may participate. The Commission has previously recognized this principle, in an arbitration proceeding between BellSouth and Alltel:

> As performance measurements, that include performance penalties, are not required under the 1996 Act, and as this Commission has an established docket to address the issue of performance measurements, the Commission finds that Issues No. 40 and No. 42 should be deferred to Docket No. 2000-139-C. *These issues concerning performance measurements will impact all the CLECs operating in*

> *South Carolina as well as ILECs, other than BellSouth. It is more appropriate to address these issues in the context of that generic proceeding than in this arbitration proceeding involving only these two parties.* In RE: Petition of ALLTEL Communications, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 Respecting an Interconnection Agreement with BellSouth Communications, Inc., South Carolina Public Utilities Commission Docket No. 2001-31-C; Order No. 2001-328, 2001 S.C. PUC LEXIS 2 (April 16, 2001) (emphasis added, citations omitted) ("ALLTEL Order") Tab 12 at 55.

Any issues relative to Verizon's loop pre-qualification process should thus be referred to a generic proceeding. If HTC is able to define specific alleged problems with that process (which it has failed to include in its Petition), it may also file complaints with this Commission or the FCC.

Third, even if HTC had properly negotiated this issue and properly raised it here, HTC still would not be entitled to anything more than what Verizon already provides to itself and its customers. As the Commission is well aware, Section 251(c)(3) of the Act requires unbundled access only to an "*existing* network and not to an unbuilt superior one." Iowa Utilities Bd. v. FCC, 120 F.3d 753, Tab 1 at 812 (8th Cir. 1997), aff'd in part and rev'd in part on other grounds, AT&T v. Iowa Utilities Bd., 119 S.Ct 721 (1999) (emphasis in original). The Eighth Circuit has affirmed this interpretation of the Act, noting that CLECs have no right to more than what an ILEC like Verizon offers to itself:

> Subsection 251(c)(2)(C) requires the ILECs to provide interconnection "that is at least equal in quality to that provided by the local exchange carrier itself . . . ." Nothing in the statute requires the ILECs to provide superior quality interconnection to its competitors. The phrase "at least equal in quality" establishes a minimum level for the quality of interconnection; it does not require anything more." Iowa Utilities Bd. v. Federal Communications Comm'n, 219 F.3d 744, Tab 2 at 758 (8th Cir. 2000).

The Commission, likewise, rejected an above-parity standard in the arbitration proceeding concluded last year between BellSouth and Alltel:

> BellSouth is not required to ensure that ALLTEL meet the Commission's service requirements. Neither is BellSouth required to provide substantially more to a CLEC than it provides to its retail analog . . . . the FCC has explained that "the BOC must provide access to competing carriers in 'substantially the same time and manner' as it provides to itself . . . a BOC must provide access equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers or its affiliates, in terms of quality, accuracy and timeliness." *It would be unjust and unreasonable for this Commission to impose a parity standard on BellSouth that exceeds what is required under the Act.* ALLTEL Order, Tab 12 at 10-11 (emphasis added, citations omitted).

In addition, this Commission found that BellSouth met its Section 271 obligations by offering CLECs the same access to loop make-up information that it offered to BellSouth's own retail operations, "in the same manner and within the same time frames." In RE: Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996, Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996, South Carolina Public Utilities Commission Docket No. 2001-209-C, Order No. 2002-77 (Feb. 14, 2002) Tab 14 at 86.

Like BellSouth, Verizon provides HTC and other CLECs in South Carolina the same access to Verizon's loop pre-qualification process that Verizon offers to its own retail customers, "in the same manner and within the same time frames." HTC is not entitled to a different or "superior" process that would grant it special rights separate and apart from all other CLECs doing business with Verizon.

If the Commission decides to substantively address this issue, it should immediately reject HTC's edits to Verizon's proposed language. The first edit, in Network Elements Attachment Section 3.15.2, would reduce the loop provisioning interval from fifteen to ten business days. The Commission should note that Verizon uses a fifteen-day interval for loop conditioning activity requested by its own affiliates and customers.

The second edit, in Network Elements Attachment 3.16, would permit HTC to avoid paying the Engineering Work Order charge Verizon charges when a CLEC cancels a loop conditioning request. In essence, the change would permit HTC to avoid paying Verizon for work that it has requested Verizon to do, which Verizon has started, but which Verizon has not yet completed. Verizon does not offer this "free ride" to its own affiliates or customers, and there is no basis for the Commission to give a free ride to HTC.

In addition, to the extent HTC's real concerns in Issue 25 are (1) memorializing with greater specificity the operation of Verizon's loop pre-qualification process, and (2) clarifying HTC's obligations relative to that process, Verizon proposes that the following compromise language replace Network Elements Attachment Section 13.4.2:

> Verizon provides access to mechanized xDSL loop qualification information to help CLECs identify those loops that meet applicable technical characteristics for compatibility with xDSL services that the CLEC may wish to offer to its end user customers. HTC must access Verizon's mechanized loop qualification system in advance of submitting a valid electronic transmittal service order for xDSL service arrangements. The loop qualification information provided by Verizon gives CLECs the ability to determine loop composition, loop length and may provide other loop characteristics, when present, that may indicate incompatibility with xDSL services such as load coils or Digital Loop Carrier. Information provided by the mechanized loop qualification system also indicates whether loop conditioning may be necessary. It is the responsibility of HTC to evaluate the loop qualification information provided by Verizon and determine whether a loop meets HTC's requirements for xDSL service, including determining whether conditioning should be ordered, prior to submitting an order.

Consistent with this new Section 3.14.2, Verizon would then delete Network Elements Attachment Section 3.14.3, marking it "Intentionally Left Blank" (as that section would now be redundant). Verizon does not believe this greater specification of its processes is necessary (especially since HTC has interconnected with Verizon since 1998), its proposal is a good faith effort to meet HTC's asserted concerns and thus resolve this issue in this proceeding.

In summary, Verizon will continue to comply with its legal obligation to make available to HTC any upgraded loop pre-qualification system that it has now or adopts for its own use. To the extent that HTC's changes attempt to impose greater obligations, then the Commission should reject them. The Commission should approve Verizon's language as originally proposed.

Discussion:

The Commission will address the issue of performance standards to govern Verizon's provision of loop pre-qualification information in a future generic proceeding to be held before this Commission. In the interim, the Parties shall incorporate in their Interconnection Agreement the language regarding performance standards and remedies from the AT&T/GTE South, Inc. interconnection agreement currently on file with the Commission.

ISSUE 26. UNE PROVISIONING. What standards should apply to Verizon's time intervals for the provisioning of UNEs and what penalties should apply for Verizon's failure to provision UNEs in a timely and accurate manner?

HTC's Position:

HTC's position is that Verizon should be held to some minimum standard time intervals, and should be required to provision UNEs for HTC at the lesser of that minimum standard time interval or the time interval that Verizon achieves with its own customers. Petition at 37.

Verizon's Position:

HTC does not appear to propose or dispute any specific contract language with regard to this issue.

Verizon will provision loops for HTC according to the terms of the new interconnection agreement and at parity with the level of service it provides to its own customers. As discussed in Issue 25, HTC is entitled to no more and no less:

> Subsection 251(c)(2)(C) requires the ILECs to provide interconnection "that is at least equal in quality to that provided by the local exchange carrier itself . . . ." Nothing in the statute requires the ILECs to provide superior quality interconnection to its competitors. The phrase "at least equal in quality" establishes a minimum level for the quality of interconnection; it does not require anything more." Iowa Utilities Bd. v. Federal Communications Comm'n, 219 F.3d 744, Tab 2 at 758 (8th Cir. 2000).

Verizon does not have any standard intervals for provisioning UNEs. Instead, Verizon fills all orders – from Verizon's own retail customers or from CLECs – on the first available date. It will do the same for HTC. Whether or not it is true, as HTC claims, that BellSouth provides "more reasonable provisioning intervals" (Petition at 37) than Verizon does, this factor is irrelevant to the issue at hand. Verizon provides UNEs to HTC at parity with its own customers and other carriers. HTC has no right to anything more. Iowa Utilities Bd. v. Federal Communications Comm'n, 219 F.3d 744, Tab 2 at 758 (8th Cir. 2000).

As in Issue 25, HTC does not propose any contract language in Issue 26, and its discussion here demonstrates the same objective of obtaining Commission-approved performance measures and penalties for failure to meet some undefined UNE provisioning time interval. Verizon accordingly refers the Commission to its discussion of this approach in its response to Issue 25, which apply equally here. Issue 26 is not properly presented to the Commission because HTC has not fully set forth the issue to be arbitrated or explained the parties' respective positions on that issue. HTC has proposed no new language and its purported concerns are properly addressed in a generic proceeding (or through a Commission complaint), rather than arbitration of an interconnection agreement. Verizon will continue to provide UNEs in accordance with the requirements of Applicable Law and the new interconnection agreement.

Verizon has submitted extensive testimony from Ms. Clayton and Mr. Rousey regarding Verizon's alleged performance under the current interconnection agreement -- performance that has dramatically improved according to HTC's own "Report Cards." To the extent HTC is relying upon those "Report Cards" with regard to Issue 26, Verizon hereby incorporates all of its discussion about them by reference to its arguments on Issue 9, as well as to the full Clayton and Rousey Testimony pre-filed with the Commission.

Discussion:

The Commission will address time intervals for the provisioning of UNEs and penalties in a generic proceeding in the near future. In the interim, the Parties shall incorporate in their Interconnection Agreement language regarding performance measures and remedies from the GTE South/AT&T interconnection agreement currently on file with the Commission.

ISSUE 27. UNREASONABLE PROVISIONING CHARGES. What charges should apply for canceled activity?

HTC's Position:

Section 3.16 of the Network Element Attachment proposes to impose charges on HTC when activity is canceled. The charges to be imposed by Verizon do not recognize that the abandonment of orders and service plans may be the result of Verizon's actions, inaction, delay, or inaccurate information that Verizon provides to HTC. It is HTC's position that the charges contemplated by Section 3.16 should be a general business cost to be recovered through normal service activity. If this provision is to remain, then it follows that the penalty incentive payments involving credits, waiver of charges, and payment for damages should apply in reverse when Verizon causes the unexpected disruption in plans.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Network Elements Attachment § 3.16 *in toto* despite HTC's reservations.

The dispute in Section 3.16 concerns cost responsibility where HTC asks Verizon to begin conditioning a loop, but cancels the order prior to completion. Verizon's proposed language permits HTC to cancel loop conditioning orders, but it fairly allocates the costs incurred up to the point of cancellation. If, for example, HTC cancels the order after work has begun but before actual construction, HTC will have to pay an engineering work order charge. Where construction work has already begun, HTC will be responsible for both the work order charge and the conditioning tasks performed. This language is patently reasonable because it reimburses Verizon for costs that Verizon would not have incurred but for HTC's request.

HTC attempts to confuse this issue by arguing that Verizon does not recognize that "abandonment of orders and service plans may also be the result of Verizon's actions, inaction, delay, or inaccurate information that Verizon provides to HTC." Petition at 38. HTC provides no objective justification for this purported concern. Instead, it seeks unconstrained latitude to escape any liability for the costs it causes by simply claiming that cancellation of a particular order was Verizon's fault. It is plainly unreasonable for the Commission to deny Verizon recovery of costs HTC causes. If the Commission decides to entertain this issue, then it should order Verizon's language to be included in the new interconnection agreement.

Discussion:

We adopt Verizon's proposed Network Elements Attachment Section 3.16, in toto. Verizon should be allowed to recover costs from HTC associated with Engineering Work Orders which were created after a loop analysis has been completed but prior to the commencement of construction work. Verizon is entitled to cost related to the Engineering Work Order. We agree with Verizon that this language in the Agreement is appropriate because it reimburses Verizon for costs that Verizon would not have incurred but for HTC's request. See Appendix A to the Post-Hearing Brief of Verizon South, Inc. at 96.

Further, Verizon's language provides that if HTC cancels the request for conditioning after the loop analysis has been completed and after construction work has started or is complete, HTC shall compensate Verizon for an Engineering Work Order charge as well as the charges associated with the conditioning tasks performed as set forth in the Pricing Attachment. Once again, Verizon should be entitled to recover costs associated with HTC's requests for services from Verizon.

ISSUE 28. GENERAL PROVISIONING TERMS. What should the processes, timing, and scheduling terms be for the provisioning of UNEs?

HTC's Position:

Section 3.17 of the Network Elements Attachment sets forth the processes for conversion of a loop from Verizon's network to HTC's. HTC will require that the terms set forth explicitly what the processes will be because HTC has already experienced unpredictable performance on the part of Verizon. HTC expects that the activity of Verizon contemplated by Section 3.17 should be predictable according to a timetable that is reasonable given the timing of these activities for Verizon's own customers. As explained above, Verizon is swift when it provisions service to a customer that may be considering obtaining competitive service from HTC, but is slow when it comes to provisioning a UNE loop for HTC.

Verizon's procedures suggest that when loop conversion is performed with some form of extraordinary coordination, additional charges will apply. Over the last three years, HTC has complained repeatedly to Verizon about its unreasonable delays, unfulfilled orders and a number of problems with respect to the provisioning of UNEs to HTC and other service responsibilities. In response to these complaints, at Verizon's suggestion, HTC was told that if it wanted better performance from Verizon, HTC should order UNEs pursuant to specific coordination instructions that Verizon explained to HTC representatives. The current interconnection agreement sets forth a single non-recurring charge for the provision of UNEs. However, after inviting HTC to order UNE loops in a manner that Verizon suggested would address the service provisioning problems, Verizon used this opportunity improperly to impose new and additional non-recurring charges. If HTC cannot obtain reasonable performance from Verizon according to standard terms, HTC should not be forced to pay extraordinary amounts to Verizon as the only means to ensure what is sometimes less than basic provisioning success. However, Section 3.17.1.1 also states that when HTC does not request a coordinated cut over, standard processes will apply. The proposed terms do not address what those standard processes shall be.

In some or many instances, HTC will not require the extraordinary form of cut over and does not intend to pay for these extraordinary activities. HTC questions whether the so-called coordinated conversions achieve any better or more predictable performance than do non-coordinated standard conversions. Accordingly, HTC questions whether additional charges should apply for what may not actually be any extraordinary performance at all.

In such case, the agreement should set forth the terms for non-coordinated cut overs.

For the standard process, Verizon should be prepared to confirm all orders within 24 hours of the time that the order is received by Verizon. The scheduled conversion should be confirmed to occur during a two (2) hour period of time on the established service date. If at the end of the scheduled two hour period, Verizon has not properly handled the conversion, HTC should be allowed to bill Verizon because HTC will have to deploy its own personnel to attend to the problem. The agreement should provide that HTC will bill Verizon for a field visit for these situations. If the problem involves a trouble report to Verizon, the resolution of the repair should be made on an expedited basis. The order and/or repair should not be placed in another 24-hour repair window. In other words, if there is a problem, the resolution of the problem should receive the highest preference.

Similar processes should apply to coordinated cut overs when problems arise as the result of Verizon technician errors or delays.

In either case, errors or failure to comply within established time periods, should subject Verizon to penalty payment in the form of service credits, waivers of charges, and damages.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Network Elements Attachment §§ 3.17, and 3.17.1.1, despite HTC's reservations.

Without proposing any contract language of its own, HTC complains that Verizon's proposed § 3.17 *et seq.* of the Network Elements Attachment setting forth the process for converting live telephone exchange service to analog loops is vague and should "set forth explicitly what the processes will be". Petition at 38. HTC conveniently ignores § 3.17.1.2 of the new interconnection agreement, which provides:

> HTC shall request Analog 2W loops for coordinated cutover from Verizon by delivering to Verizon a valid Local Service Request ("LSR"). Verizon agrees to accept from HTC the date and time for the conversion designated on the LSR ("Scheduled Conversion Time"), provided such designation is within the regularly scheduled operating hours of the Verizon Regional CLEC Control Center. Within three (3) Business Days of Verizon's receipt of such valid LSR, or as otherwise required by Applicable Law, Verizon shall provide HTC the scheduled due date for conversion of the Analog 2W Loops covered by such LSR.

This section establishes the time frame and process for Verizon's completion of conversion orders. No additional language—even if HTC had proposed any—is necessary.

Verizon will complete conversions within a timeframe that is reasonable "given the timing of these activities for Verizon's own customers." Petition at 38. HTC's request for Verizon to "confirm all orders within 24 hours of the time the order is received by Verizon" (Petition at 39) is unreasonable, as well as out of parity with Verizon's treatment of its own customers and other CLECs. Verizon will provide HTC the scheduled due date for the conversion within 3 business days of the receipt of the order, unless applicable law provides otherwise. (See Verizon's proposed language for § 3.17.1.2).

HTC's request for performance penalties is also unwarranted, for the same reasons Verizon discussed in its response to Issue 25. If the Commission addresses this issue, even though it was not properly presented, it should approve Verizon's proposed language.

Discussion:

The Commission will institute a generic proceeding in the near future to address the adoption of standards related to General Provisioning Terms. In the interim, Verizon shall provide UNEs at intervals which Verizon achieves for its own customers.

ISSUE 29. SUBLOOP AVAILABILITY. What should the time intervals be for the provision of access to subloops?

HTC's Position:

HTC's position is that the interval for providing access to subloops (distribution and feeder, respectively) should be set forth with specificity in the Agreement. HTC believes the appropriate time period for the provision of subloops should be stated in the agreement as sixty (60) days. Petition at 39-40.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Network Elements Attachment §§ 6.1.10 and 6.2.5, despite HTC's reservations.

Verizon's proposed Sections 6.1.10 and 6.2.5 explain that access to be provided to Sub-Loop Distribution Facilities and Feeder Sub-Loop shall be provided in accordance with negotiated intervals. Uniform intervals are not feasible for subloops because the highly technical process of providing such access depends on many variables beyond Verizon's control. Verizon cannot commit to arbitrary fixed intervals when it has little control over its ability to meet the intervals.

The interval for providing access to sub-loop elements varies for a number of different reasons. For example, in order to access to Verizon's feeder distribution interface, HTC would most likely need to install a telecommunications outside plant interconnection cabinet ("TOPIC"). The TOPIC would have to be installed within 100 feet of Verizon's feeder distribution interface. Prior to installing the TOPIC, HTC would need to obtain appropriate local governmental approval and acquire the necessary easements or rights of way. Verizon is not involved in this process and exercises no control over it whatsoever.

Case-by-case negotiation in this non-standardized environment is superior to arbitrary intervals. Indeed, the FCC explicitly permits evaluation of the technical feasibility of subloop unbundling on a case-by-case basis. UNE Remand Order, Tab 5 at ¶24. Under this approach, the Parties will cooperate to coordinate access intervals. HTC would obtain any necessary right of way; inform Verizon when it intends to have its equipment installed; and together with Verizon would agree on Verizon's provisioning date. The Commission should adopt Verizon's language, which is the only practical approach to deal with this issue.

Discussion:

Sections 6.1.10 and 6.2.5 state that Verizon shall provide access to subloops (distribution and feeder, respectively) in accordance with "negotiated intervals." In the interest of certainty and making subloops available in a timely manner, we agree that the interval should be set forth with specificity in the agreement. We find HTC's proposed interval of sixty (60) days to be reasonable. Verizon shall provide sub-loops within sixty (60) calendar days from receipt of a bona fide order in instances where rights of way have been obtained. However, in instances where rights-of-way have not been obtained, Verizon is required to provide sub-loops within sixty (60) calendar days once the rights-of-way have been obtained. Verizon is instructed to actively pursue the acquisition of rights-of-way, when needed, on a good faith basis.

ISSUE 30. MAINTENANCE OF UNEs. What charges should apply between the Parties for activity related to maintenance of network elements?

HTC's Position:

HTC's position is that the one-sided provision that imposes charges on HTC when maintenance is requested by HTC with erroneous instructions should be deleted or should be made reciprocal. Petition at 40.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Network Elements Attachment § 15 *in toto*, despite HTC's reservations.

In § 15 of the Network Elements Attachment, Verizon agrees to respond to HTC trouble reports on a non-discriminatory basis relative to its own customers and other similarly situation carriers. HTC, however, assumes responsibility for initial trouble isolation and providing Verizon with the appropriate dispatch information. To the extent HTC provides Verizon with erroneous information, thereby causing Verizon to incur additional costs, HTC should be financially responsible for its mistakes. Verizon's proposed language is not intended as a penalty, but only a means to properly compensate Verizon for the costs it incurs in attempting to fulfill orders according to HTC's specifications.

HTC states that "it has been HTC's experience that the information that HTC receives from Verizon in response to maintenance requests is more likely to be in error." Petition at 40. There is no support for this statement and HTC has never filed a formal complaint alleging any such problems. Certainly, these unspecified allegations are not a proper basis for deletion of Verizon's language, particularly because Verizon must act according to the Performance Standards set out by the new interconnection agreement at § 31 of the General Terms and Conditions.

Discussion:

Regarding the maintenance of UNEs, the Parties shall incorporate language in their

Interconnection Agreement which states that if either party, based on erroneous information, incurs costs, the Party who provides the erroneous information shall be responsible for the related costs.

ISSUE 31. COLLOCATION TERMS AND PRICES. What terms and conditions should apply with respect to Verizon's provision of collocation to HTC?

HTC's Position:

HTC's position is that, by law, rate structures and rates for collocation must be established consistent with the pricing standards that the FCC has set forth. Petition at 40.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Collocation Attachment § 1 *in toto*, despite HTC's reservations.

Verizon will provide HTC with collocation in accordance with applicable law and in accordance with Verizon's South Carolina access tariff on file with this Commission. The new interconnection agreement need only reference that tariff and applicable law. It is not necessary or appropriate to include more specific language, as HTC suggests, especially since HTC has made no proposal for review by Verizon or the Commission.

HTC's objection to Verizon's language rests upon its claim that the terms of its (expired) current interconnection agreement with Verizon differed from the tariff terms because they "were derived from the arbitrated agreement between AT&T and Verizon." Petition at 40. HTC argues that it is entitled to the terms of that expired agreement.

HTC's current interconnection agreement with Verizon has expired, and Verizon has no obligation to continue to provide collocation under the terms of that agreement. In addition, when AT&T and Verizon negotiated the agreement HTC references, Verizon's tariff had yet to be approved by the Commission. The collocation services portion of Verizon's South Carolina tariff became effective on January 22, 2001. Now that the tariff is approved and available, it sets forth a nondiscriminatory standard that should apply to all collocating carriers.

In addition, applying Verizon's tariff enhances certainty and efficiency and, in the event of state or federal regulatory changes, it is easier for both parties to modify a tariff than multiple interconnection agreements. Further, the tariff update procedure is an open, established process in which all parties can participate. Indeed, HTC and every other CLEC had an opportunity to review and comment on Verizon's tariffed collocation terms prior to Commission approval. It would be improper for the Commission to force Verizon to now negotiate different terms and conditions in multiple interconnection agreements for the many CLECs collocating with Verizon. Such a requirement would be highly inefficient and an administrative burden.

HTC failed to raise any objections to specific tariff terms and simply deleted the new interconnection agreement's reference to Verizon's tariff and leaves the issue unresolved. The Commission should reject this approach and adopt Verizon's language.

Discussion:

The Commission will address cost-based collocation rates for review as an issue in the upcoming generic docket to address cost-based UNE rates and the deaveraging of UNE rates. In the interim, we hereby order that Verizon shall provide collocation at rates contained in the 1998 HTC/Verizon agreement.

ISSUE 32. COLLOCATION BY A NON-INCUMBENT. Should collocation requirements apply to non-incumbent LECs such as HTC?

HTC's Position:

HTC's position is that it is not an incumbent LEC and is not legally required to provide collocation to requesting carriers. Petition at 41.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Collocation Attachment § 2.0 *in toto*, despite HTC's reservations.

Verizon's proposed § 2.0 establishes a common sense solution to the situation where Verizon seeks to deliver its traffic to HTC's POI *on Verizon's own facilities*--in other words, where Verizon seeks to self-provision its own facilities to deliver traffic to HTC's network. To efficiently deliver traffic to HTC, Verizon needs to gain physical entry to HTC's network.

Section 251(a) of the Act imposes a duty on all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Verizon is seeking self-provisioning as a means to effect such interconnection. Verizon has not requested an unfettered right to collocate. Absent an option to self-provision, however, Verizon would be forced to purchase transport from the HTC or from a third party, thereby providing HTC or that third party with a windfall—and increasing Verizon's costs for no legitimate reason. Verizon should, instead, be permitted to terminate traffic using its own facilities via a collocation arrangement or operationally equivalent means.

Verizon's language is consistent with the goals of the Act and the options Verizon provides HTC for traffic traveling in the opposite direction. The Commission should promote maximum efficiency by approving Verizon's language.

Discussion:

While Verizon might like to save money by provisioning its own facilities directly to HTC and collocating in HTC's offices, we cannot require HTC to allow this. HTC has no legal obligation to do so. Section 251(c) of the Act imposes upon incumbent local exchange carriers, like Verizon, the obligation to provide collocation to requesting telecommunications carriers. There is no corresponding obligation for non-incumbent local exchange carriers, like HTC. Verizon does not need, nor does it have any legal right to obtain, collocation from HTC. For these reasons, this provision must be deleted.

ISSUE 33. DERIVATION OF PRICES. What are the prices that Verizon is willing to offer and from what sources are these prices derived?

HTC's Position:

HTC's position is that, by law, rate structure and rates for services and elements must be established consistent with the pricing standards that Congress and the FCC have set forth. Petition at 41; See Act § 252(d); 47 C.F.R. § 51.505(b). That pricing standard utilizes the forward-looking Total Element Long Run Incremental Cost ("TELRIC") methodology. 47 C.F.R. § 51.505(b); see Verizon Communications, Inc. v. Federal Communications Commission, 535 U.S. ___ (2002) (filed May 13, 2002) (upholding TELRIC pricing). Verizon has not provided any real justification for its rates, pursuant to applicable law. Watkins Direct Testimony at 39 (TR. at 87). HTC's position is that, until Verizon can properly justify different cost-based rate structures and rates, the Commission should adopt BellSouth's UNE rates for the most urban cost zone. See BellSouth UNE Order.

Verizon's Position:

HTC does not appear to dispute specific contract language in this issue. In arbitration Issues 33, 36 and 37, HTC asks what prices Verizon will offer and the source of those prices. The Commission has not set generally applicable prices by means of a generic proceeding. In light of the still-uncertain federal pricing standard to be applied in the states, the Commission has prudently deferred action with regard to establishing generally applicable permanent prices for Verizon's UNEs. The United States Supreme Court recently issued its final decision regarding the FCC's TELRIC standard in Verizon Communications v. FCC, 2002 U.S. LEXIS 3559 (U.S. May 13, 2002).

What HTC seeks in this issue is a comprehensive review of Verizon's Pricing Attachment. In this regard, Verizon's Pricing Attachment includes several categories of rates. Many of these rates were previously ordered by the Commission in the AT&T/Verizon arbitration and are marked as such. The wholesale discount reflects both the results of the AT&T/Verizon arbitration and the FCC's Order approving the Bell Atlantic/GTE merger. Verizon's tariffed rates are also incorporated by reference into the Pricing Attachment. To the extent applicable law has required Verizon to derive new rates pursuant to prescribed cost methodologies, Verizon also includes those rates. Many rates in this latter category are marked as "interim." Given Verizon's designation of each category of rates, Verizon does not understand why HTC seeks any further clarification of their source in this proceeding.

The UNE rates included in the new interconnection agreement are the lowest rates available to any CLEC in South Carolina and in some cases are lower than the rates included in HTC's prior interconnection agreement with Verizon. Verizon does not believe HTC intends to challenge Verizon's UNE rates *per se*, and there is no legitimate basis to do so. If HTC does wish to initiate a UNE cost proceeding, then the procedural schedule in this case will need to be extended substantially to allow cost study preparation.

Discussion:

Although HTC requests that we adopt BellSouth's UNE rates for the most urban cost zone, we note that BellSouth's costs will differ from Verizon's costs. Therefore, this Commission will establish a generic docket to address deaveraged UNEs rates and pricing. In the interim, the Parties are instructed to incorporate language in the Agreement which requires Verizon to provide UNEs at rates consistent with the rates contained in the AT&T/GTE South, Inc. Agreement on file with the Commission.

ISSUE 34. DEAVERAGED UNE RATES. In what manner should Verizon be required to establish UNE prices that are deaveraged on a geographic basis?

HTC's Position:

HTC's position is that FCC rules require Verizon to establish UNE rates on a geographically deaveraged basis, and Verizon should be required to do so. Petition at 42.

Verizon's Position:

HTC does not appear to dispute any specific contract language in this issue.

FCC Rule 51.507(f) requires UNE prices to be deaveraged into at least three zones per state based on geographic differences in cost. There are two options for complying with this directive. The Commission can establish at least three zones for Verizon and for each other company. Or it can retain a single rate for Verizon South Carolina to go along with the different rates of BellSouth and Sprint. In this way, there will be at least three zones per state, each of which reflects different cost characteristics. This latter approach is Verizon's preferred option, at least until local rates can be rebalanced, as it will result in UNE rates that are more rationally aligned with retail rates. This approach will allow the Commission to mitigate the potential for undue CLEC rate arbitrage.

If the Commission is not inclined to support Verizon's preferred approach, and if it believes HTC's Petition compels it to launch a proceeding to deaverage Verizon's rates and requires it to establish at least three cost-based zones for Verizon, then Verizon urges the Commission to seek a waiver of the deaveraging requirement from the FCC. The FCC has granted a number of such waiver petitions filed by state commissions seeking relief from the rule, to the extent it may be interpreted to require Company-specific deaveraged rates (the FCC has never issued such an interpretation). In no event should the Commission launch a deaveraging proceeding in this case. The more appropriate forum for that kind of complex inquiry would be a generic proceeding. Filing of cost-based deaveraging proposals would require much more time than the Commission has set aside for this case.

Contrary to HTC's suggestion, Verizon is not required to provide information to it or any other CLEC with regard to UNE deaveraging for the simple reason that the Commission has not yet implemented Rule 51.507(f) as it would apply to Verizon's territories.

Discussion:

This Commission shall address the issue of deaveraged UNEs in a future generic docket. Verizon shall file its deaveraged UNE rates based on at least three defined geographic areas within the State of South Carolina to reflect geographic cost differences. During the interim, Verizon should provide UNEs at rates consistent with those contained in the AT&T/GTE South, Inc. Agreement on file with the Commission.

ISSUE 35. PRICING GENERAL TERMS. How should the Pricing Attachment relate to the terms of the agreement?

HTC's Position:

HTC's position is that the pricing terms of the agreement must be simplified so that HTC can determine what price will apply to a particular element or service at a particular time. Petition at 42. HTC has proposed language that would (1) confine charges to those specifically set forth in the Pricing Attachment or tariffs specifically referenced by the Pricing Attachment; (2) allow price changes on a prospective basis only; (3) allow HTC to apply charges that are different than Verizon's to the extent that HTC's costs may be higher; (4) establish that no new charges will apply unless the Parties have agreed in writing; (5) clarify that the resale carrier is responsible for the federal subscriber line charge, as a single item, instead of the proposed multiple charges in the proposed language that appear to be the same charge; and (6) prevent Verizon from attempting to change prices or add new charges improperly. Id. at 42-43.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Pricing

Attachment §§ 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 2.1.3, 2.1.4, 2.3.1, and 3 *in toto*, despite HTC's claimed reservations.

In this issue, HTC disputes the portion of Verizon's template agreement that establishes the particular documents that will contain each Party's charges for services provided pursuant to this new interconnection agreement. As discussed more fully below, Verizon's various prices are established in Verizon's tariffs; Appendix A to the Pricing Attachment; the main body of the new interconnection agreement; and in such other writings as the Parties negotiate. This ensures that charges always remain current and in accordance with Commission orders.

HTC proposes instead that that all pricing information appear in Appendix A. For the reasons explained below, HTC's approach is overly simplistic and is contrary to the public interest.

Pricing Attachment, §§ 1.3 - 1.8: Pricing Generally:

Verizon's experience has shown that language is necessary to clearly delineate the relationship between Verizon's tariffs, the prices listed in the Pricing Attachment, prices listed in other portions of the new interconnection agreement and prices that may need to be negotiated. Sections 1.3 to 1.8 of the Pricing Attachment establish the appropriate hierarchy as follows. *First,* to the extent the party providing the service has in place a tariffed charge for the service, the tariffed charge shall apply. See Pricing Attachment, Section 1.3. For example, if, as is the case in New York, Verizon's tariff contains commission- ordered rates for reciprocal call termination, those rates shall apply. *Second,* in the absence of tariffed rates, as is likely to be the case in South Carolina, the charges for a service shall be the charges set forth in Appendix A to the Pricing Attachment. Id., Section 1.4. Appendix A lists, for example, charges applicable to resold services, UNEs, transport, etc. *Third,* in the absence of either a tariffed charge or a charge in Appendix A, the applicable charge shall be as otherwise provided for in the new interconnection agreement. Id., Section 1.6. *Fourth,* if there is not a charge pursuant to the first three scenarios, the applicable charge shall be the charge the Commission or the FCC has approved. Id., Section 1.7. *Finally,* if no charge applies under any of these scenarios, the charge shall be mutually agreed to by the Parties in writing. Id., Section 1.8. Section 1.5 of the Pricing Attachment further clarifies that changes in tariff charges shall automatically supersede charges listed in Appendix A so long as such charges are not subject to stay.

Verizon's language recognizes the importance of keeping charges current, as well as nondiscriminatory across the industry. By automatically incorporating tariffed rates, the new interconnection agreement ensures that HTC will pay Verizon's most current rates and such rates shall be no more and no less favorable than those applicable to other CLECs. To the extent the Commission orders or approves changes to Verizon's tariffs, those changes will automatically apply to HTC.

HTC seeks, however, to craft a custom-tailored pricing arrangement whereby only the charges in Appendix A would apply. HTC's language edits Verizon's template agreement to provide that only the charges stated in Appendix A shall apply unless the Appendix specifically references a tariff. Verizon's intent, however, is to charge the prices that have been approved by the FCC, the Commission, or that otherwise would apply in accordance with applicable law as such charges and the law evolve. HTC improperly seeks to have the Commission limit Verizon to only those charges that are specifically set forth in the new interconnection agreement.

Moreover, where legal requirements change, HTC is only willing to apply those requirements on a prospective basis. See HTC Proposed Pricing Attachment, Section 1.5. Without knowing in advance exactly what the changes will require, the only correct approach would be to provide that the new interconnection agreement conform to the changed legal requirements, whatever those requirements may be. Verizon is not willing to waive its right to keep its charges current with applicable law and the Commission should reject HTC's numerous edits.

Pricing Attachment, §§ 2.1.3 & 2.1.4 -- Wholesale Discount Changes:

Verizon's proposed Section 2.1.3 states that to the extent permitted by applicable law, Verizon has the ability to establish a wholesale discount as it would apply to a particular telecommunications service different than the wholesale discount generally available to telecommunications services pursuant to Section 251(c)(4) of the Act. This section would apply were Verizon to increase its discount for a particular service to an amount even greater than that required by applicable law. Verizon is unable to understand why HTC objects to this section.

HTC also adds the words "on a prospective basis" to Verizon's section 2.1.4, ostensibly to allow only prospective treatment of changes in legal requirements. As Verizon noted above, changes in legal requirements should be implemented in accordance with the specific requirement. The requirement may or may not be only prospective in nature, so HTC's edits are speculative and inappropriate.

Pricing Attachment, § 2.3: Other Charges:

Section 2.3 addresses responsibility for collection and payment of federal line cost charges. Verizon's language reflects differences in terminology used to describe the FCC's common line charges. HTC has provided no explanation as to why it will not agree to Verizon's language.

Pricing Attachment, § 3: HTC Prices:

Section 3 requires that charges billed by HTC be no higher than the charges Verizon bills to HTC for comparable services. HTC may assess a higher charge for a comparable service, however, only where it has demonstrated to the appropriate regulatory agency that its costs are higher than Verizon's. This scenario may arise in the context of reciprocal compensation for call termination. Here, the FCC requires symmetrical compensation unless a LEC proves to a state commission that its costs are higher than those of the ILEC. 47 C.F.R. 51.711.

HTC's proposed language ignores any obligation HTC would have to demonstrate its costs to the Commission and states only that disputes arising with regard to HTC's charges are to be resolved pursuant to the dispute resolution process of the new interconnection agreement. HTC's proposed language resolves nothing and should be rejected by the Commission.

Discussion:

The Commission will establish a generic docket to address cost-based UNE rates and the deaveraging of UNE rates. During the interim, Verizon shall provide UNEs at rates consistent with those rates contained in the AT&T/GTE South, Inc. agreement on file with the Commission.

ISSUE 36. NON-RECURRING CHARGES. What should the non-recurring charges be?

HTC's Position:

HTC has the same concerns with non-recurring charges (NRCs) that it has articulated under Issue 33 above for rates generally. See HTC Pre-Hearing Brief at 63.

Verizon's Position:

HTC disputes Verizon's Non-Recurring Charges appearing in the "Non-Recurring Charges -- Loop and Port" portion of the Pricing Attachment.

HTC's also generally disputes Verizon's prices. This appears to be the same issue that HTC raised in Issue 33 and Verizon incorporates its response to Issue 33 by reference herein. See Verizon's response to Issue 33.

Discussion:

The Commission will address non-recurring charges during its generic proceeding addressing cost-based UNE rates and the deaveraging of UNE rates. In the interim, Verizon should provide UNEs at rates consistent with those contained in the AT&T/GTE South, Inc. Agreement on file with the Commission. Additionally, HTC is not required to comply with the legal requirements regarding Verizon's Merger Order until this issue is resolved during the generic UNE proceeding.

ISSUE 37. REFERENCE TO ARBITRATED RATES. What should be the terms and conditions with respect to the referencing of rates included in other carriers' arbitrated agreements?

HTC's Position:

HTC's position is that it does not have a problem with referencing the Verizon/AT&T arbitrated rates, where appropriate, in the Pricing Attachment. See HTC Pre-Hearing Brief at 64. However, Verizon's proposed language in Footnote 2 of Appendix A to the Pricing Attachment would inappropriately require HTC to agree to certain legal conclusions regarding Verizon's Merger Order requirements. Id. HTC asserts this phrase should be removed from the footnote. Id. HTC believes the footnote should also be modified to make clear that any changes in such referenced rates should apply on a prospective basis as to HTC. Petition at 46.

Verizon's Position:

The Commission should order the parties to adopt Verizon's proposed Pricing Attachment, Footnote #2, without the changes suggested by HTC.

The only contract language related to prices that HTC appears to specifically dispute with regard to in Issue 37 is the footnote to the Pricing Attachment that explains the inclusion of the previously arbitrated AT&T/Verizon rates. The footnote explains that the AT&T/Verizon rates were arbitrated rates taken from the Commission's Interim Order in Docket No. 96-375-C. The Commission mandated the rates after finding them consistent with Verizon's costs in South Carolina. (As the Commission is aware, they are not *voluntarily negotiated* rates and thus, are not subject to interstate most-favored-nation (MFN) obligations under Appendix D, §§ 31 and 32, of the Merger Order.)

HTC also seeks to add a sentence at the end of footnote 2 that makes no sense. The sentence states: "Should the arbitrated rates referenced in this footnote change in a manner that affects the rates applied pursuant to this Agreement, then those modified rates shall apply on a prospective basis only." See Watkins Direct Testimony at 44 (describing revised contract language). If and when the arbitrated rates in the new interconnection agreement change, they will change pursuant to the Commission's orders or other applicable law. It is circular and illogical to say that they will only change pursuant to the new interconnection agreement's own term. If HTC means to require that any change in the arbitrated rates ordered by the Commission shall have prospective application only, that decision can only be made by the Commission in accordance with applicable law.

Discussion:

The language contained in Verizon's proposed footnote which references certain legal requirements under Verizon's Merger Order will be addressed during the generic proceeding regarding cost-based UNE rates and the deaveraging of UNE rates. Additionally, HTC is not required to comply with legal requirements regarding Verizon's Merger Order until this issue can be addressed by the Commission in its final order on de-averaged UNEs.

IV. CONCLUSION.

The Parties are directed to implement the Commission's resolution of the issues addressed in this Order by modifying the language of the Interconnection Agreement to the extent necessary to comply with the rulings and framework established herein. The Parties shall file an Agreement with the Commission within sixty (60) days after receipt of this Order. If the Parties are unable, after good faith efforts, to mutually agree upon language with respect to any of the issues addressed in this Order, at the end of the sixty (60) days, the respective Parties shall file proposed language representing the most recent proposal to the other Party on that issue, and the Commission shall adopt the language that best comports with the Commission's findings in this proceeding.

This Order is enforceable against HTC and Verizon. Verizon affiliates which are not incumbent local exchange carriers are not bound by this Order. Similarly, HTC affiliates are not bound by this Order. This Commission cannot enforce contractual terms upon a Verizon or HTC affiliate which is not bound by the Act.

This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

William Saunders

Chairman

ATTEST:

Gary E Walsh

Executive Director

(SEAL)